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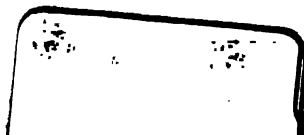
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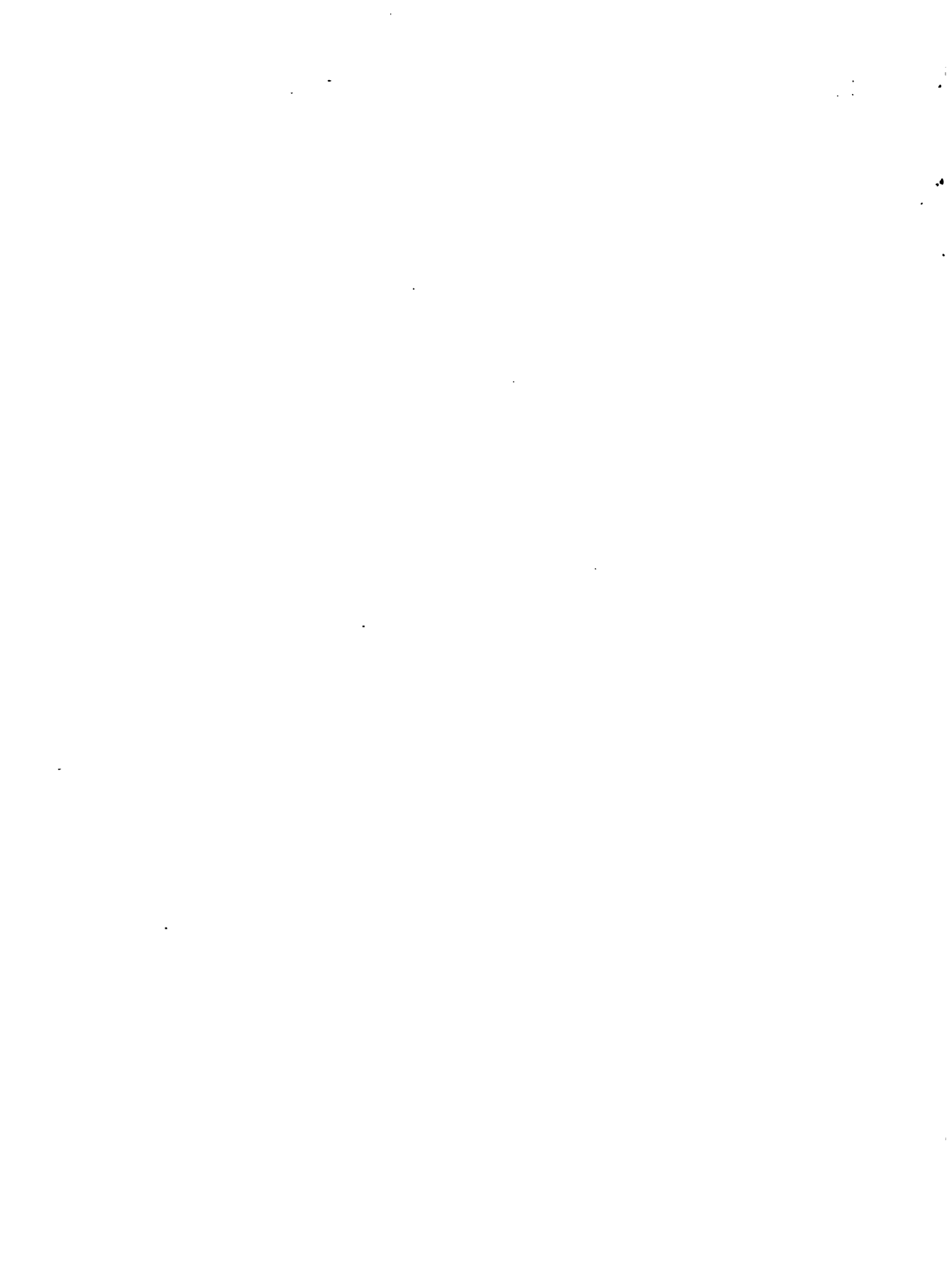
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THE
LAW JOURNAL REPORTS

FOR
THE YEAR 1881.

CASES RELATING TO
THE POOR LAW, THE CRIMINAL LAW,
AND OTHER SUBJECTS

CHIEFLY CONNECTED WITH

The Duties and Office of Magistrates,

PRINCIPALLY DECIDED IN THE
QUEEN'S BENCH, COMMON PLEAS, AND EXCHEQUER DIVISIONS,

AND IN THE

COURT FOR CROWN CASES RESERVED,
MICHAELMAS SITTINGS, 1880, TO TRINITY SITTINGS, 1881,
BOTH INCLUSIVE.

REPORTED

In the Court for Crown Cases Reserved,
By WALTER HENRY MACNAMARA, Esq.,
BARRISTER-AT-LAW.



In the Queen's Bench Division,
By J. H. ETHERINGTON SMITH, Esq., AND RICHARD HOLMDEN
AMPHLETT, Esq.,
BARRISTERS-AT-LAW.

In the Common Pleas Division,
By WILLIAM PATERSON, Esq., AND GILBERT GEORGE KENNEDY, Esq.,
BARRISTERS-AT-LAW.

In the Exchequer Division,
By W. DECIMUS I. FOULKES, Esq., AND FRANCIS PARKER, Esq.,
BARRISTERS-AT-LAW.

MAGISTRATES' CASES.
VOLUME L.

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MDCCCLXXXI.

The Queen v. Guardians of Abergavenny Union, Q.B.

her husband, Jane went to reside in the Abergavenny Union, and became chargeable thereto in March following. The pauper and her husband resided continuously in the parish of Skenfirth, in the Monmouth Union, from 1871 to 1876, in such manner and under such circumstances in such of the years between 1871 and the 1st of January, 1876, as would, in accordance with the statutes in that behalf, render her and her husband irremovable therefrom.

In 1876, and subsequently, the pauper and her husband received relief from the Monmouth Union while residing in it.

On the 26th of March, 1879, an order was made by two Justices for the removal of the pauper to the Monmouth Union.

The order was made upon the evidence of the pauper only without any corroboration. Against that order the guardians of the Monmouth Union appealed to the quarter sessions, on the grounds (among others), first, that the pauper had not acquired a settlement in their union by residence for a term of three years prior to February, 1879, according to the 34th section of the 39 & 40 Vict. c. 61; and, secondly, that there was no corroboration of the pauper's evidence before the Justices who made the order of removal.

In support of the first ground of appeal the appellants contended that this section was not retrospective, and cited the case of *The Queen v. The Ipswich Union* (1), in which it was held that a pauper who had resided in a parish for three years ending before the 15th of August, 1879, when the Act passed, but had ceased to reside in the parish before that day, did not acquire a settlement in it under the 34th section.

In support of the second ground of appeal the appellants contended that the order of removal having been made by the Justices without any corroborative evidence was bad by the 34th section of the 39 & 40 Vict. c. 61, and that the court of quarter sessions could not receive evidence of corroboration.

The Court held that it was competent

to them to receive, and they did receive, corroborative evidence, which they considered to be sufficient, but on the authority of the case of *The Queen v. The Ipswich Union* (1) they decided that the pauper had not acquired a settlement by residence within 39 & 40 Vict. c. 61. s. 34; consequently they quashed the order of removal subject to the present case.

The question submitted was, whether the order of the Court of quarter sessions was good in law. If yea, then that order is to stand confirmed and the appeal is to be allowed with costs.

If this Court is of opinion that the order of the Court of quarter sessions was wrong, then it is to be quashed and the order of removal is to stand, and the appeal is to be dismissed with costs.

[The above facts are taken from the judgment of Manisty, J.]

A. T. Lawrence, for the appellants.—The question here arises under the 34th section of the Divided Parishes, &c., Act (2). So far as regards the question of residence, it must be admitted that the finding of the sessions was wrong. The decisions in *The Guardians of the Brompton Union v. The Carlisle Union* (3) is not distinguishable from the present case, and shews that there was a residence in the Monmouth Union. It is contended, however, that inasmuch as the original order was clearly bad for want of corroborative evidence and was appealed against on that ground,

(2) By 39 & 40 Vict. c. 61. s. 34, "Where any person shall have resided for the term of three years in any parish, in such manner and under such circumstances in each of such years as would, in accordance with the several statutes in that behalf, render him irremovable, he shall be deemed to be settled therein until he shall acquire a settlement in some other parish by a like residence or otherwise; provided that an order of removal in respect of a settlement acquired under this section shall not be made upon the evidence of the person to be removed without such corroboration as the Justices or Court think sufficient."—See 8 Vict. c. 10. s. 6.

(3) 47 Law J. Rep. M.C. 114; Law Rep. 3 Q.B. D. 479.

(1) 46 Law J. Rep. M.C. 207; Law Rep. 2 Q.B. D. 269.

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Union, and no order of removal could be obtained.

The conclusion at which we have arrived is, that the quarter sessions were right in receiving the corroborative evidence, but that (the evidence being satisfactory) they were wrong in deciding that the pauper had not gained a settlement by residence in the Monmouth Union.

The result is that the order of quarter sessions is quashed, the order of removal stands, and the appeal is dismissed with costs.

Solicitors—R. J. Child, agent for T. J. A. Williams, Monmouth, for appellants; P. Wilkinson, agent for J. Nesbitt, Abergavenny, for respondents.

[IN THE COURT OF APPEAL.]

(Appeal from the Divisional Court.)

1880. } THE QUEEN v. OASTLER AND MEWS,
Nov. 8. } JUSTICES OF SURREY.*

Maintenance of Insane Prisoners—By whom Expenses to be paid—3 & 4 Vict. c. 54. s. 2—27 & 28 Vict. c. 29—40 & 41 Vict. c. 21. ss. 4 and 57.

The liability for the maintenance of insane prisoners who have no settlement, which is thrown, by 3 & 4 Vict. c. 54, and 27 & 28 Vict. c. 29, on the county in which they are confined, is not transferred to the consolidated fund by the Prisons Act, 1877 (40 & 41 Vict. c. 21), s. 4, which enacts that "all expenses incurred in respect of the maintenance of the prisons to which the Act applies, and of the prisoners therein, shall be defrayed out of moneys provided by Parliament":—So held by the Court of Appeal (affirming the decision of the Divisional Court).

Appeal from the Divisional Court.

The case is reported 48 Law J. Rep. M.C. 188.

* *Coram* Selborne, L.C.; Coleridge, C.J.; and Brett, L.J.

A rule had been obtained and afterwards made absolute for a *mandamus* directing the Justices of Surrey to order their treasurer to pay the expenses incurred in respect of M. Bray, a prisoner who, while in the county gaol, had been duly certified to be insane, and had been transferred to the County Lunatic Asylum.

The Justices appealed.

The Solicitor-General (Sir F. Herschell) and E. Clarke, for the appellants.—It is sought by the Crown to make the county pay for the maintenance of this criminal insane person; but the county authorities contend that the effect of section 4 of the Prisons Act of 1877 (1) is to relieve the county of the charge, and to transfer it to the consolidated fund. It is reasonable that this should be so, for as the Secretary of State has now power over all prisons, all the expenses are intended to be charged upon one fund: moreover, if this be not so, injustice must ensue, for the Secretary of State can transfer prisoners, can close prisons and can order that a prison in one county shall receive prisoners from other counties; so that it may be that one county will have to support all the prisoners from the adjoining counties who, while confined in a prison in the first suggested county, may chance to become insane.

An insane criminal is still a prisoner within the meaning of section 57 of this Act (2), for he is neither dead nor dis-

(1) 40 & 41 Vict. c. 21. s. 4: "On and after the commencement of this Act, all expenses incurred in respect of the maintenance of prisons to which this Act applies, and of the prisoners therein, shall be defrayed out of moneys provided by Parliament."

(2) 40 & 41 Vict. c. 21. s. 57: "A 'prisoner' for the purposes of this Act means any person committed to prison . . . for punishment or otherwise, and the 'maintenance of a prisoner' includes all such necessary expenses incurred in respect of a prisoner, for food, clothing, custody, safe conduct and removal from one place of confinement to another or otherwise, from the period of his committal to prison until his death or

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charged, so that it is necessary to refer to 3 & 4 Vict. c. 54. s. 2, and 27 & 28 Vict. c. 29, which amended the earlier Act, to discover whether these expenses would have, prior to the Act of 1877, been payable by a prison authority. Those Acts provide that when a prisoner has been duly certified to be insane, and when the place of his settlement cannot be ascertained, two Justices shall make an order on the treasurer of the county, city, borough or place where such person shall have been imprisoned, to contribute a certain sum to his maintenance. The prison authority was, prior to the Prisons Act of 1877, the quarter sessions; and as the expenses of insane prisoners were, by the statutes just cited, to be levied by two Justices, it may be argued that these expenses were not expenses payable by a prison authority so as to be included in section 57 (2), but the order, though made by the two Justices, would have been paid out of and included in the county rate to be levied at quarter sessions; the prison authority had no special fund, it could only pay the sum ordered out of the county rate, and that was a rate which the quarter sessions, the prison authority, alone could levy—the two Justices who made the order could not levy any rate—so that as a fact the money was paid out of moneys levied by the prison authority.

[SELBORNE, L.C.—The two Justices were not the prison authority, and the quarter sessions in levying a rate were not acting as a prison authority.]

That is because the financial arrangements of counties require two steps to be taken to raise the money—first the order, and then the levying of the rate; but that is only a matter of form and of the machinery by which rates are levied.

Sir J. Holker (with him *Poland* and *A. L. Smith*), for the Crown.—The real question is, whether the provisions as to this matter of 3 & 4 Vict. c. 54 and 27 & 28 Vict. c. 29 have been repealed by 40 & 41 Vict. c. 21. It is contended that they have not been repealed, that the

discharge from prison, as would, if this Act had not passed, have been payable by a prison authority. . . .”

provisions of the later Act are not inconsistent with those of the earlier Act, and that there is nothing unreasonable in the provisions of both if read together; so that there is no need to hold that there has been a repeal by implication when there has not been any express repeal. The suggested injustice existed—if it be an injustice—before the passing of 40 & 41 Vict. c. 21, for the Secretary of State could remove prisoners from one prison to another under 28 & 29 Vict. c. 126, which was an Act for amending and consolidating the law as to prisons.

[SELBORNE, L.C.—We think this point as to the repeal of the provisions of the 3 & 4 Vict. c. 54 is so forcible that we need not hear any further argument.]

Clarke, in reply.

SELBORNE, L.C.—The order made in this case has been rightly made. The Prisons Act of 1877 provides that the expenses incurred in respect of the maintenance of prisons to which that Act applies, and of the prisoners therein, shall be defrayed out of moneys provided by Parliament. The expenses incurred in the present case were not incurred, strictly speaking, in respect of the maintenance of prisoners, for they were incurred in respect of a prisoner who had been certified to be insane, and who had been transferred to a lunatic asylum. The Legislature prescribed the steps to be taken in the case of such insane persons by 3 & 4 Vict. c. 54. That statute and other statutes to the same effect are not referred to in the Prisons Act of 1877; and as there is nothing repugnant to each other in the provisions of the two statutes, the earlier statute containing the provisions in respect of insane persons must be held to be still in force, and therefore this appeal must be dismissed.

COLERIDGE, C.J.—I am of the same opinion. It is to be observed that 3 & 4 Vict. c. 54 was an Act passed to amend a more elaborate Act on the same subject of 9 Geo. 4. c. 40. Neither the Act 27 & 28 Vict. c. 29 nor the Act of 1877 refers to the statutes relating to criminal lunatics, either by way of repeal or by way of directing that the several Acts should be

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read together. The statutes 27 & 28 Vict. c. 29 and 40 & 41 Vict. c. 21 deal with prisoners and do not refer to the code laid down for the treatment of criminal lunatics in the earlier Acts to which I have referred, so that those provisions still exist and are unaffected by the legislation contained in the Prisons Act of 1877.

BRETT, L.J.—I agree that the order that has been made has been rightly made if the provisions contained in 3 & 4 Vict. c. 54 are still in force; it is, however, said that that statute has been repealed by more recent legislation. It is clear that the Act of 1877 has not repealed the earlier Act in express terms, so that the ordinary rule of construction applies—that if two statutes can be read together without contradiction, or repugnancy, or absurdity, or unreasonableness they should so be read together. There is nothing unreasonable in so reading these statutes, and nothing unreasonable in holding that the Prisons Act of 1877 applies to sane prisoners and not to the maintenance of insane prisoners.

Judgment affirmed.

Solicitors—F. F. Smallpiece, for appellants; Hare & Fell, agents for the Solicitor to the Treasury, for the Crown.

[IN THE QUEEN'S BENCH DIVISION.]

1880. } ROUGH (*appellant*) v. HALL
Nov. 13. } (*respondent*).

Sale of Food and Drugs Acts, 1875, 1879 (38 & 39 Vict. c. 63. s. 14, and 42 & 43 Vict. c. 30. s. 3)—Consignor and Consignee—Adulterated Milk in course of Transit—No Delivery of Sample to Agent of Seller.

By the Sale of Food and Drugs Act, 1875, s. 14, a person purchasing an article of food with the intention of submitting the same to analysis is required forthwith to notify to the seller or his agent selling the

article his intention to have the same analysed, and to deliver a sample to the seller or his agent. By the Amendment Act, 1879, s. 3, an inspector may procure at the place of delivery any sample of milk in course of delivery to the purchaser or consignee, in pursuance of any contract for the sale to such purchaser or consignee of such milk, and shall submit the same to be analysed, and the same shall be analysed and proceedings shall be taken and penalties on conviction shall be enforced in like manner in all respects as if such inspector had purchased from the seller or consignee under the principal Act. The respondent, who resided at Coventry, was charged with having sold, to the prejudice of the purchaser, a pint of adulterated milk. It appeared that he had contracted to supply milk to a London dealer, and that the appellant seized one of the milk cans at the Euston Station, while in course of delivery, and required the railway porter to give him a sample for the purpose of having it analysed. The appellant then gave notice to the porter of his intention to have the analysis made, and gave him the required sample and treated him as the agent of the seller under section 14 of the Food and Drugs Act, 1875:—Held, that the porter was not an agent of the seller; but Held also, that section 14 of the principal Act was not incorporated into 42 & 43 Vict. c. 31, s. 3, and that accordingly the due performance of the condition contained in the former section was not necessary to ensure a conviction.

This was a case stated on appeal from a decision of a metropolitan police magistrate.

The respondent, who resided near Coventry, was charged with having, on the 18th of March, sold, to the prejudice of the purchaser, a pint of milk adulterated with sixteen per cent. of water. It appeared that he had contracted to supply milk to a dealer in London, to be delivered free of charge at the Euston Station of the London and North-Western Railway Company, and that on the 18th of March the appellant, who was an inspector, being at the Euston Station and seeing a milk can arrive, required the railway porter to give him a sample for the purpose of having it analysed. The appellant then gave notice

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to the porter of his intention to have the analysis made, gave him the required sample, and treated him as the agent of the respondent under section 14 of the Food and Drugs Act, 1875.

Upon the above facts the magistrate dismissed the summons on the ground that the appellant had not complied with the requirements of section 14 of the above-mentioned Act, inasmuch as the said railway porter was not an agent of the seller within the section (1).

(1) By the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 13, "any medical officer of health, inspector of nuisances or inspector of weights and measures, or any inspector of a market, or any police constable acting under the direction and at the cost of the local authority appointing such officer, inspector or constable, or charged with the execution of the Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place, and such analyst shall, upon receiving payment, . . . with all convenient speed analyse and give a certificate to such officer, wherein he shall specify the result of the analysis."

By section 14, "the person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article, his intention to have the same analysed by the public analyst, and shall offer to divide the article into three parts to be then and there separated, and each part to be marked or sealed or fastened up in such manner as its nature shall permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent. He shall afterwards retain one of the said parts for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst."

By the Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 3, "any medical officer of health, inspector of nuisances or inspector of weights and measures, or any inspector of a market or any police constable under the direction and at the cost of the local authority appointing such officer, inspector or constable, or charged with the execution of this Act, may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract to the sale of such purchaser or consignee of such milk; and such officer, inspector or constable, if he suspect the same to have been sold contrary to the provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and

Tickell, for the appellant.—It must be admitted that the porter was not an agent of the seller. The only question therefore to be argued is whether or not it is a condition precedent to a conviction, in cases where a sample of milk has been procured under 42 & 43 Vict. c. 30. s. 3, that before analysis the steps directed by section 14 of the Act of 1875 should be taken. It is contended that section 14 of the Act of 1875 does not apply to samples of milk taken under section 3 of the Act of 1879. If it were held to be applicable to a case like the present the Amendment Act will be altogether inoperative, inasmuch as neither the seller nor his agent for the sale of milk would be present when the sample was taken.

The respondent did not appear.

FIELD, J.—I am of opinion that this appeal must be allowed, on the ground that in our judgment the appellant was not required to take the steps required by section 14. These steps the appellant had endeavoured to take by handing a sample of the milk to the railway porter, but it is clear that such a person was not an agent within the meaning of the section. The only question, therefore, is whether the proceedings under section 14 of the Act of 1875 must in a case of this kind be necessarily taken in order to ensure a legal conviction. I am of opinion that they need not be so taken, though the point raised is certainly not free from doubt. It must be remembered that the public analyst is a person appointed by the local board, and whose acts therefore are presumed to be above suspicion. The inspector also occupies a similar position, and is appointed by a public body. Now, under the earlier statute the point at which the Legislature deemed it proper to interfere by permitting seizure was when the article had been sold; so long as there was no sale there was no offence. The next step after the article has been seized is to see that it is fairly analysed. It is therefore

proceedings shall be taken and penalties on conviction be enforced in like manner in all respects as if such officer, inspector or constable had purchased the same from the seller or consignee under section 13 of the principal Act."

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directed that the article shall be divided into three samples, one of which is to be offered to the seller or his agent, and it is competent for one or other of these persons to take, or not to take, the sample so offered. That is the simple machinery provided by the original Act. But before the amending Act was passed, it very frequently happened that retail dealers were found to complain of the great hardship they suffered, inasmuch as they purchased their milk as pure milk from farmers in the country, and had not the means of knowing that it had been adulterated. In order to meet those cases the Legislature resolved to strike a blow at adulteration in the country, and authorised the inspector to procure "at the place of delivery any sample of any milk in course of delivery to the purchaser" in pursuance of a contract of sale. Now there must under this statute still be a purchase or sale of the milk in question, but everybody knows that large quantities of milk are sent up daily to London from long distances under contracts of sale. In the present instance the milk dealer in London so contracted with the respondent, the terms of the bargain being that the milk sold should be delivered at the Euston Station. The delivery of the milk was not completed, because it was still in charge of an officer of the railway company. The inspector accordingly divided the milk in the manner directed by the principal Act, and offered one portion to the railway porter, who was, in my judgment, clearly not an "agent of the seller." If, therefore, we are to read section 14 of the Act of 1875 as incorporated into the later Act, the appellant's case altogether fails because he has not delivered any sample to the agent of the seller. But it is clear that if the later Act be so construed it will become, in cases like the present, altogether inoperative, because it would not be possible to supply the seller or his agent with a sample. I think, therefore, that the words "in like manner in all respects" must be held not to include the proceedings in the earlier stage. The only inconvenience of so holding is, that the seller cannot have an independent analysis of the article alleged to be

adulterated; but I think that the Legislature, remembering that the inspector was a public officer, and had no interest in the result, did not intend to give to the consignor the same privilege as was given to an ordinary seller. I am of opinion, therefore, that this case must be remitted to the magistrate to be further dealt with by him.

MANISTY, J., concurred.

Case remitted.

Solicitor—W. T. Ricketts, for the appellant.

[IN THE QUEEN'S BENCH DIVISION.]

1880. }
Dec. 2. }

Ex parte AUSTIN.

Certiorari—Defect in Conviction by Justices—Conviction drawn up and filed—Application for Rule—Return—Right of Justices to substitute Fresh Conviction.

When Justices have convicted for an offence unknown to the law, and have returned the conviction to the clerk of the peace, the Court will allow a rule for a certiorari to go, notwithstanding that the Justices in shewing cause against such rule return a corrected record of the conviction, shewing such conviction to have been properly made.

This was a rule to shew cause why a writ of *certiorari* should not issue to bring up a conviction made by certain Justices for the county of Essex, under the circumstances hereinafter stated, for the purpose of having the same quashed.

It appeared from the affidavits that Austin was, on the 28th day of November, 1879, on the information of George Frost, summoned before the Justices for having, on the 14th of November, at the parish of St. Lawrence, in the county of Essex, and within the limits of a certain several fishery belonging to the Tolbsbury and Mersea Blackwater Oyster Fishery Company (Limited), unlawfully used a certain implement of fishing, to wit, a trawl net, not being a net adapted to

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solely for catching floating fish, and so used as not to disturb or injure an oyster bed belonging to the said company, contrary to the statute in that case made and provided.

At the hearing of the information, and before the conviction, the applicant by his solicitor objected to the jurisdiction of the Justices to hear and determine the information on the ground, *inter alia*, that neither the summons nor the evidence shewed or alleged that he had "knowingly" committed the offence. The said objections were overruled by the Justices, who convicted the applicant and ordered him to pay the sum of 1s. and costs.

The said conviction was made under and by virtue of 31 & 32 Vict. c. 45. s. 53, which enacts that "it shall not be lawful for any person other than the grantees, their agents, servants and workmen, within the limits of any such several fishery, or in any part of the space within the same, described in this behalf in the order, or other than the owner of any such private oyster bed, his agents, servants and workmen, within the limits of such bed, knowingly to do any of the following things: To use any implement of fishing except a line and hook, or a net adapted solely for catching floating fish, and so used as not to disturb or injure in any manner any oyster or mussel bed, or oysters or mussels, or the oyster or mussel fishery."

It appeared the conviction did not state or allege that the applicant "knowingly" committed the alleged offence, or "knowingly" did any of the acts and things prohibited by the statute; accordingly the applicant moved for and obtained a rule *nisi* for a *certiorari* to bring up the conviction for the purpose of having it quashed.

It appeared that after the rule was obtained, and after the conviction had been returned to the clerk of the peace for the county, the magistrates drew up a fresh conviction in which the word "knowingly" was inserted.

Willis and Laaton shewed cause against the rule.—It is admitted that the conviction as first drawn up cannot be supported, but it is competent for the Justices in

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answer to this rule to return the conviction in a proper shape—*The King v. Barker* (1). "If," says Lord Kenyon, in delivering judgment in that case, "the magistrate has done no more than return the conviction in a more formal shape instead of sending it up in the informal manner in which it was first drawn, and supposing that the facts as they really happened will warrant him in the return he has now made, the contrary of which is not imputed, I am of opinion that it was not only legal but laudable in him to do as he has done, and he would have done wrong if he had acted otherwise. . . . It is no answer to say that a party convicted may be thereby induced to incur an unnecessary expense in suing out a *certiorari* to get rid of an informal conviction; for a mere informality ought not to be the inducement for removing it into this Court, but some substantial defect in the justice and legality of the proceeding itself before the magistrate." All that is required is that the fresh conviction should be drawn up before the former one has been quashed for informality—*Chaney v. Payne* (2), *Charter v. Greame* (3).

[FIELD, J.—In *Charter v. Greame* (3) the former conviction had not been returned to the sessions, though *Paley on Conviction* (6th ed. at p. 304) no doubt states that "that fact would not, it seems, affect the decision."]

They cited also *Massey v. Johnson* (4), and *The Queen v. Chaney* (5).

O. E. Jones appeared to support the rule, but was not called upon to argue.

LORD COLERIDGE, C.J.—This is a very small matter so far as relates to the consequences of the conviction; but the principle involved is one of considerable importance. Mr. Willis's argument has been, that though the magistrates may have convicted the applicant altogether illegally of some offence which does not exist, he must nevertheless acquiesce, or,

(1) 1 East, 186.

(2) 1 Q.B. Rep. 712; 6 Jur. 80.

(3) 13 Q.B. Rep. 216.

(4) 12 East, 67.

(5) 6 Dowl. 381.

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if he moves for a rule for a *certiorari* to bring up the bad conviction, he will be met by a second conviction on the return to the rule. I think this rule ought to go. I can find no authority for the proposition that when once a bad conviction has been filed at the quarter sessions in due course, it is an answer to this rule for the magistrates to return a good one.

FIELD, J.—I am of the same opinion. The question is, whether, upon the facts disclosed before us, the subject is entitled to have a writ of *certiorari* to have the conviction returned to this Court. It has lately been the practice upon that rule to discuss whether the conviction should be quashed, but such a course would be inconvenient here. The Justices have drawn up a bad conviction and filed it among the records of the county. Thereupon the applicant applied for this rule. I think the rule should go and a return thereto be made, though what may be the result of a motion to quash is perhaps more doubtful.

Rule absolute.

Solicitors—E. Doyle & Sons, agents for H. W. Jones, Colchester, for applicant; F. & T. Smith & Sons, agents for Pope & Co., Colchester, for prosecutors.

[IN THE QUEEN'S BENCH DIVISION.]

1880. { THE QUEEN (on prosecution of
Nov. 8, 25. { W. H. SMITH AND SONS) v.
THE JUSTICES OF SURREY.

Poor Law—Rate—Appeal to Quarter Sessions—Notice of Appeal—Reasonable Time—17 Geo. 2. c. 38. s. 4; 12 & 13 Vict. c. 45. s. 1.

By 17 Geo. 2. c. 38. s. 4, an appeal from a poor rate is given to the "next quarter sessions," and by 12 & 13 Vict. c. 45. s. 1, "fourteen clear days' notice of appeal must be given." An appellant under these provisions is, however, entitled to a further reasonable time in which to make up his mind whether to appeal or not.

Where, therefore, a rate was published on the 21st of March, and the next actual

quarter sessions were held on the 6th of April,—

Held, that the appellant was not bound to appeal to these sessions, but was entitled to appeal to the next following sessions.

Rule calling on the Justices of Surrey sitting in quarter sessions to show cause why a *mandamus* should not issue directing them to hear the appeal of Messrs. W. H. Smith & Sons against a poor rate made by the assessment committee of the parish of Lambeth, and published on Sunday, the 21st of March, 1880.

On the 19th of February the assessment committee made out their provisional list under the provisions of the Metropolis Valuation Act, 1869 (32 & 33 Vict. c. 67), in which Messrs. Smith were rated in respect of their bookstalls at the railway stations in the parish. On the 20th of February notice was served on Messrs. Smith by the committee that they must give notice of any objections they might have to the list before the 4th of March. On the 26th of February Messrs. Smith gave such notice, and on the 9th of March their case was heard by the assessment committee and their objections overruled.

On the 20th of March the rate was made, and was duly published on Sunday, the 21st of March.

The next quarter sessions for the county were held on the 6th of April.

On the 7th of June Messrs. Smith gave notice of appeal to the quarter sessions. When the appeal was called on at the sessions, which took place on the 5th of July, the Court of quarter sessions refused to hear the appeal on the ground that it was too late, and ought to have been made to the preceding quarter sessions, there having been fourteen clear days between the publishing of the rate and those sessions.

A rate *nisi* for a *mandamus* having been obtained,

Morgan Howard (Archibald with him), for the respondents, showed cause.—By 17 Geo. 2. c. 38. s. 4 the appeal from a poor rate is given to the "next general or quarter sessions" after the publication of the rate. The appellants in this case

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did not appeal until after the "next" quarter sessions. No doubt they were bound under the provisions of 12 & 13 Vict. c. 45. s. 1 to give "fourteen clear days' notice of appeal," but there was time for them to do so between the date of the publication of the rate and that of the next quarter sessions. The appellants knew they were going to be rated as far back as the 20th of February, and had actually argued their case before the assessment committee; they were therefore fully prepared.

Kingsford (*Prosser* with him), for the appellants.—In order to give the fourteen days' notice required by the statute, the appellants must have given notice on the 22nd of March—that is, on the day after the rate was published. An appellant is entitled to have a reasonable time in which to make up his mind whether to appeal or not; and the Court will have regard to the circumstances of each case in determining what is or is not reasonable time. He referred to *The Liverpool United Gas Company v. Overseers of Everton* (1), *The King v. Essex* (2), *The King v. Flintshire* (3). It has not been actually laid down that time is to be allowed for consideration before giving the notice, but the cases show that it must be. He referred to *Pritchard's Quarter Sessions*, p. 647, and the cases there cited.

Our. adv. vult.

MANISTY, J. (on Nov. 25) delivered the written judgment of himself and BOWEN, J.

This was an application for a *mandamus* to the Justices of Surrey to enter the necessary continuances and hear an appeal against a rate made and allowed on Saturday, the 20th of March, and published on the church doors on Sunday, the 21st of March, in the parish of Lambeth.

The appellants, Messrs. W. H. Smith & Sons, are occupiers of bookstalls at railway stations, and their complaint is that they have been rated improperly in respect of those stalls.

(1) 40 Law J. Rep. C.P. 137; Law Rep. 6 C.P. 414.

(2) 1 B. & Ald. 210.

(3) 7 Term Rep. 200.

The parish of Lambeth has a Local Act (50 Geo. 3. c. 19), but the time for appealing against the rate depends on 17 Geo. 2. c. 38. s. 4, according to which the appeal should be to the next sessions, and upon 12 & 13 Vict. c. 45. s. 1, according to which fourteen clear days' notice of appeal is to be given.

The 6th of April being the day for holding the then next sessions, notice of appeal, to be in time, must have been given upon Monday, the 22nd of March, the rate having been published on Sunday, the 21st.

Notice of appeal was not given until June the 7th, for the then next sessions which were held upon the 5th of July. The quarter sessions refused to hear the appeal on the ground that it was too late, and the application now made to us is to compel the sessions to hear it.

The appellants contend that the rate having been published on Sunday, the 21st of March, and the last day for giving notice of appeal for the next sessions being Monday, the 22nd of March, there was no time for them either to consider whether they would appeal against the rate or prepare and give notice of the appeal together with the grounds of it, if they were bound to give notice of appeal for the next sessions; consequently they contend that the April sessions was not the next sessions within the meaning of the 17 Geo. 2. c. 38. s. 4.

The defendants on the other hand contend that the appellants were not entitled to any time whatever to consider whether they would appeal or not; that they were bound to give notice of appeal (if at all) on Monday, the 22nd of March, the day after the rate was published; and that at all events the appeal ought to have been entered for the April sessions.

The question raised was admitted in the argument before us to be as yet unconcluded by any express authority. In order to arrive at a clear view of the matter we have taken time to examine the decisions relating to appeals against poor rates, and also to appeals against removals, the authorities on which latter branch of the law are numerous and throw considerable light upon the subject-matter of the application. In respect of

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both classes of appeals, the respective statutes which deal with them require that the appeal should be to the "next sessions," and a long series of cases has occurred in the last 100 years which shew that a liberal construction is to be given to these words.

Turning first to the law which governs appeals against removal, we find that appeals against removal are created and regulated by 13 & 14 Car. 2. c. 12, and 9 Geo. 1. c. 7.

By 13 & 14 Car. 2. c. 12, a power is given to the aggrieved party to appeal to the "next sessions." No definition was given in this Act of Parliament of the meaning of the term "next" sessions. Yet it is obvious that the order of removal might be executed so shortly before any sessions as to render it practically impossible to appeal to it. Meanwhile the statute contains no provision whereby any notice is rendered necessary before entering an appeal, or before the actual hearing of it.

The statute of 9 Geo. 1. c. 7 leaves untouched, in the case of removals, the law as to the "next sessions;" that still remained to be explained. Nor did the Act prescribe any notice as a preliminary to entry of an appeal. But it is enacted that no appeal should be "proceeded with" unless upon reasonable notice to be given to the respondent, the reasonableness of the notice to be judged of by the sessions. If it appeared to the sessions that reasonable notice had not been given, then they were directed to adjourn the appeal till the sessions after.

It is clear that under the above statutes the party aggrieved by an order of removal had an absolute right, however short the interval of time between the grievance complained of and the next actual sessions, at least to enter his appeal. He could not force it on to a hearing in default of notice, because it was not, in default of notice, to be "proceeded with;" but if the time was too short to give such notice, he was entitled to have his appeal entered at any rate and respited. The sessions could not refuse him this—*The King v. Gloucestershire* (4).

(4) 1 Dougl. 101.

Whether, if time to give a reasonable notice before the next sessions was sufficient, he was entitled in the same way to enter his appeal without giving any notice at all and to have it respited, was at one time doubted—*The King v. Yorkshire, N.R.* (5). Ultimately it was held—*The King v. Staffordshire* (6)—that even if the appellant had had ample time to give his notice, and had nevertheless refrained from giving it, he still might enter his appeal, leaving it to the Justices to respite it on the ground of want of reasonable notice. By this decision the appellant was able, by lying by and abstaining from giving his notice on the one hand, while entering his appeal upon the other, to extend considerably the time for "proceeding with" his appeal.

So far we have dealt (in the case of appeals against removal) with the right of the appellant to insist on entering his appeal. His obligation to enter the appeal now remains to be considered.

If the time of the grievance occurred so shortly before the next actual sessions as either, first, to render it practically impossible for the appellant to consider whether he should even enter his appeal at all, or, second, to leave no time for him to give the number of days' notice which was necessary according to the practice of the sessions—was he bound nevertheless to enter the appeal, which could not possibly be heard, or might he pass the sessions which stood literally next, and enter at the sessions following?

The first of these two questions has been answered in a series of cases beginning with *The King v. Yorkshire, E.R.* (7). The order of removal there had been made upon the 22nd of September. The removal of the pauper was on the 5th of October. Hull, the place to which the pauper had been removed, is sixty miles from Northalerton, where, on the 6th of October (the very next day), the sessions began. No appeal was entered at that sessions, and on application to compel the Justices to receive an appeal on the January sessions following, the Court made the rule abso-

(5) 3 Term Rep. 150.

(6) 7 East, 549.

(7) 1 Dougl. 192.

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late for a *mandamus*. By "next sessions," said the Court, the statute of Car. 2. must have meant "the next possible sessions."

This language was followed and amplified in *The King v. Flintshire* (3). The order of removal there was dated on the 24th of September and executed on Monday, the 3rd of October, at four p.m., at Leek, which is fifty-four miles from Mold, where, on Thursday, the 6th of October, the Flintshire sessions began. It was shewn that the overseer at Mold who conveyed the paupers to Leek could only speak the Welsh language, and that the overseer at Leek who received them could not understand him, and that nearly a week elapsed before the parish of Leek could gain any information respecting the settlement of the paupers. And though the sessions actually began on Thursday, they usually began upon Tuesday, and the overseers of Leek might fairly believe that they would begin on the very day after the execution of the order. The Court of Queen's Bench held that it was not necessary that the appeal should be entered on the 6th of October. "We ought not," said Lord Kenyon, "to decide hastily against the words of an Act of Parliament; but some reasonable time ought to be given to the parish appealing, to enable them to enquire whether or not it will be proper to enter an appeal."

In *The King v. Essex* (2) a similar view was adopted. There the order of removal was made on Tuesday, the 8th of July, and served at noon on Saturday. The distance between the respondent and appellant parishes was twenty-four miles, and the appellant parish was distant thirty-seven miles from Chelmsford, where on the next Tuesday the sessions opened. The judgment of Lord Ellenborough is as follows: "The statute of Car. 2. certainly directs the appeal to be at the next quarter sessions, but that must mean the next practicable sessions. The parish officers must have a reasonable time allowed them to make the necessary enquiries, that they may judge of the propriety of appeals or not. They are not bound to devote Sunday to such a purpose. They have had only one entire day—that is, the Monday—to get the necessary information and to

consider whether they will appeal or not, and that in my judgment is not sufficient."

It follows from the above cases that the words "next sessions" must be construed so as to afford to the appellant not only an opportunity of entering his appeal, but a reasonable time to consider whether he should enter it or not. But it still might be the case that, even if he had time to decide as to entering it, it was impossible for him (owing to the length of reasonable notice required by the practice of the sessions) to give the requisite notices in time. What was the duty of the appellant under such circumstances? Was he bound at all hazards to enter his appeal, even though, owing to the want of notice, the case could not be tried? Or might he pass over that sessions as impracticable, and wait till the sessions following?

Different answers at different times were given by the Courts to this question. In *The King v. Herefordshire* (8) the King's Bench held that the proper course under such circumstances was to enter and have the appeal respited. On Friday, the 18th of April, the order was made. It was executed on Saturday, the 19th, and on the Tuesday following, the 22nd, the Easter sessions were held at Hereford, twenty miles distant. The parish not having appealed at these sessions, the Justices of the Midsummer sessions refused to receive the appeal. The following is the judgment of Chief Justice Kenyon: "The words of the Act of Parliament are very strong, and they require the appeal to be made at the sessions next after the grievance. Where indeed an order of removal has been made some time before, and only executed a very short time before the sessions, so that there was no possibility of appealing to those sessions, this Court has interfered by granting a *mandamus* to compel the Justices at the following sessions to receive the appeal, because the words 'next sessions' mean the 'next possible sessions.' But this is a very different case, for there were two intervening days after the execution of the order, and before the Easter sessions; and if there was not sufficient time before

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those sessions to give reasonable notice of appeal, the appeal might have been then entered and adjourned, according to statute 9 Geo. 1. c. 7. s. 8."

That it was the duty of the appellant to enter and respite, even if there was no time for him to give the notices, provided he had time enough to enter, was also treated as the correct law in *The King v. Buckinghamshire* (9) and *The King v. Staffordshire* (6). But this doctrine has been questioned, and it has been held in later times that it is unnecessary to enter, for the purpose of adjournment, any case which it is impossible (consistently with the sessions practice as to notice) to have heard—*The King v. Southampton* (10). An entry under such circumstances becomes a mere useless formality—*The King v. Kent* (11), and *The King v. Devonshire* (12). See also, per Mr. Justice Montague Smith, *The Liverpool United Gas Company v. Everton* (1). The case of *The King v. Yorkshire, W.B.* (13), if the facts are carefully considered, is not inconsistent with this view, and the suggestion to the contrary contained in the judgment is not necessary to the decision. An appellant cannot, by any conduct on his part, make impracticable the sessions which otherwise are the next practicable sessions—*The Queen v. Sussex* (14). See also *The Queen v. Yorkshire* (15), and *The King v. Yorkshire, N.B.* (5). But unless the proper notices can be given and the appeal tried, the better view would seem to be that it is not necessary to go through the ceremony of entering.

It will be seen that the authorities we have examined still leave undecided, in the case of appeals against removals, a point analogous to that which arises in the case before us of an appeal against a rate, namely, what is the law if the execution of an order of removal is sufficiently early to admit of an actual entry of the appeal, and sufficiently early, if acted on forthwith, to allow of the neces-

sary notice being given, but not sufficiently early to give the appellant a reasonable time to consider whether to appeal or submit? Was he bound at least to enter his appeal? Must the term "next sessions" be construed so as to allow a party aggrieved not merely the number of days requisite for his notice, but, in addition, a reasonable time to determine whether such notices should be given by analogy to the decisions which have been held (apart from all question of notice) that he ought to have some time to look about him, and determine whether he shall enter his appeal? In the case of *The Liverpool United Gas Company v. Everton* (1) it was assumed that the law possibly might be that he ought to have such extra time, in addition to the time necessary for his notices; but the point has never been expressly decided. We should be prepared, if necessary, in the case of an appeal against an order of removal, to adopt the view that reasonable breathing time, so to speak, must be allowed to the aggrieved party.

We have hitherto, however, dealt only with the law relating to appeals against removals. The present case is one of an appeal against a rate, and depends on separate statutes, the history of which is not wholly dissimilar to those we have just examined. All appeals are the creation of statutes, and the right of appeal against a rate begins with 43 Eliz. c. 2. s. 6, by which an appeal against a rate is given to any subsequent quarter sessions. To control this licence of appeal, 17 Geo. 2. c. 38. s. 4 was passed, which is as follows: "And be it further enacted that in case any person or persons shall find him, her or themselves aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put on or left out of such rate or assessment, or to the sum charged on any person or persons therein, or shall have any material objection to such account as aforesaid or any part thereof, or shall find him, her or themselves aggrieved by any neglect, act or thing done or omitted by the churchwardens and overseers of the poor, or by any of His Majesty's Justices of the peace, it

(9) 3 East, 343.

(10) 6 M. & S. 394.

(11) 8 B. & C. 639.

(12) 8 B. & C. 640.

(13) 4 M. & S. 327.

(14) 4 B. & S. 987; 34 Law J. Rep. M.C. 69.

(15) 27 Law J. Rep. M.C. 267.

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shall and may be lawful for such person or persons in any of the cases aforesaid, giving reasonable notice to the churchwardens or overseers of the poor of the parish, township or place, to appeal to the next general or quarter sessions of the peace for the county, riding, division, corporation or franchise where such parish, township or place lies, and the Justices of the peace there assembled are hereby authorised and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said Justices that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same; and the said Justices may award and order to the party for whom such appeal shall be determined reasonable costs, in the same manner that they are empowered to do in cases of appeals concerning the settlement of poor persons, by an Act made in the eighth and ninth years of King William 3, intituled 'An Act for supplying some defects in the Laws for the Relief of the Poor of this Kingdom.'"

Several observations arise upon this section. In the first place, no length of notice is prescribed; the reasonableness of the notice in each case is left to the sessions. In the second place, the fixing of a reasonable notice is not made by the section (as is sometimes done in other Acts of Parliament) a condition precedent to entering the appeal. An appeal, it has been held, may be entered against a rate, even if no notice at all be given—*The Queen v. Lancashire* (16); *The Queen v. Wiltshire* (17). The Justices are bound in such a case to enter and respite it, for "no notice" is the same as "no reasonable" notice; and the Act of 12 & 13 Vict. c. 45. s. 1, which prescribes a fixed notice of fourteen days instead of a reasonable notice, makes no difference, it would seem, in this respect—*The Queen v. Eyre* (18); *The Queen v. Eyre* (19). However short the time, an appellant has a right

to enter his appeal, and the Justices cannot refuse to receive his appeal, though they are at liberty to adjourn it. But was the appellant bound to enter merely for the purpose of having the appeal respited, if there was not any time even to consider whether he was justified in appealing or not? By analogy to the law with respect to appeals against removal, it would seem that he was not so bound. And it has been decided in the case of appeals against a rate, that the appellant may have fair time to determine whether he should enter his appeal. In *The King v. Sussex* (20) the poor rate was allowed on Saturday, the 5th of October, and published on the following day (Sunday). On Tuesday, the 8th of October, the October sessions began. Held, that they were not the "next" sessions, as not being the next practicable sessions at which an effectual appeal could be lodged, Lord Ellenborough, C.J., saying that "if by the late publication of the rate the parties are driven into such a narrow point of time as not to be able to make an effectual appeal at the next sessions, those must be considered the 'next' when such appeal can be made effectually."

It still remains to be considered—First, whether it is necessary in the case of a rate to enter the appeal, even if there be not sufficient time for the giving of the notices; secondly, whether, in addition to the actual number of days fixed by statute for the notices, the appellant, before being driven to enter his appeal, may take a reasonable time to consider whether such notices shall be given.

The first question was not actually decided in *The Liverpool Gas Company v. Everton* (1), but the opinion both of Mr. Justice Keating and Mr. Justice Montague Smith would seem to be that an entry under such circumstances was not necessary.

We are prepared to adopt the opinion that in such a case an entry is a ceremony which may be omitted without infringing on the Act. The "next" sessions means, in our opinion, the next sessions at which an effectual trial can be had, and for

(16) 8 E. & B. 372; 27 Law J. Rep. M.C. 161.

(17) 8 B. & C. 384; 6 Law J. Rep. M.C. 97.

(18) 6 E. & B. 992; 26 Law J. Rep. M.C. 11.

(19) 7 E. & B. 617; 26 Law J. Rep. M.C. 121.

(20) 15 East, 206.

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which proper notices can be given. We prefer the authorities which, in the cases of removals, have so held, to the authorities which imply the contrary—see *The King v. Kent* (11), *The King v. Devonshire* (12); and we see no reason why a similar interpretation should not be extended to the statute regulating appeals against a rate.

The second question is also left without any judicial decision. All that was determined in the case of *The Liverpool Gas Company v. Everton* (1) is that six days for consideration was in any case an unreasonable time, to which the appellant was not entitled.

We are of opinion, however, upon principle, that the appellant against a rate is entitled, before he enters his appeal or gives his notices, to have some fair and reasonable time to consider his position, and make up his mind whether he shall take the first step towards appealing by giving the necessary notices prescribed by 17 Geo. 2. c. 38, and to consider the grounds on which such appeal is to be heard, which grounds, by 12 & 13 Vict. c. 45, are to be specified in the notice. On the trial of the appeal he is precluded by the statute from going, in the absence of amendment, into any other ground of appeal besides those set forth in such notice. Is he to have no time to reflect upon the grounds by which he is to be bound? or is his only alternative to go through the form of entering an appeal for a sessions at which it cannot be heard?

We see no substantial ground for making a distinction in this respect between the case of appeals against a removal and appeals against a rate. It is true that it is even more important in the case of a rate than in the case of a removal that appeals should be prosecuted promptly, so that the public authorities should not be left in uncertainty whether the rate is to be attacked or not. But the authorities have in their power the means of preventing all possible inconvenience in this respect by taking care so to publish a rate as to enable all appellants to have breathing time to look about them and consider and frame their grounds of appeal.

The next actual sessions are not, as it seems to us, practically possible, where there is no time for intelligent and reasonable action as to the notices and grounds of appeal. In adopting this extension of the words of the statute, it seems to us that we are only following and giving effect to the liberal interpretation which has been placed on this and similar Acts of Parliament by authorities ranging over nearly a century.

It remains to be considered whether Messrs. Smith & Sons, the present applicants, have had such a reasonable margin of time for the giving of their notices and grounds of appeal as we think the true interpretation of the Act of Parliament requires.

We are of opinion that they had not. On the Sunday the rate was published. The Monday was the last day for giving of the notices. If Messrs. Smith & Sons are entitled to any breathing time after the publication of the rate, we think it would be idle to contend that this one broken day was sufficient to enable any reasonable person to take intelligent action about the notices and grounds of appeal. The fact that Messrs. Smith & Sons were aware, on February the 20th, that their bookstalls were included in the valuation list, and had on the 26th of February given notices of objections to the list, which were not successful, does not, we think, make this short space of part of one day sufficient, if it be otherwise insufficient. And we are of opinion accordingly that this rule should be made absolute.

Rule absolute.

Solicitors—Rogerson & Ford, for appellants;
G. W. Barnard, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]
 1880. } MOGG (*appellant*) v. THE OVER-
 Nov. 10. } SEERS OF YATTON (*respondents*).

Poor-rate—Rateable Occupation—Sale of Grass—Licence of Exclusive Pasturage for Ten Months.

Where an owner of grass land upon the determination of a previous tenancy advertised for sale by auction and sold the grass thereupon for ten months to purchasers, on the condition of their feeding it with certain stock, dressing the dung, cutting the thistles and leaving the fences in good repair, and announced at the time of the sale that it was made free from all rates, tithes and taxes,—Held, that he was rightly inserted in the rate book as occupier, the transaction with the purchasers of the grass only amounting to a licence by him to them to turn in their cattle, and not constituting them tenant occupiers.

CASE stated by certain Justices of Somerset under 20 & 21 Vict. c. 43, at the request of the appellant, against whom they had granted a warrant of distress for non-payment of a rate of 9l. 19s. 6d. under the following circumstances:—

The appellant was owner of eighty acres of grass land which became, by the determination of the tenants holding, vacant on the 25th of March, 1879. On the 28th of March, 1879, a poor-rate was made, in which the occupier's column was left blank.

On the 7th of May, 1879, the appellant sold by auction "about eighty acres of grass." Among the conditions of sale, headed "Conditions of sale of grass," was the following: "Each lot of grass will be sold from the day of sale to the 21st of March, 1880, to be fed with any kind of stock up to the 21st of December, 1879 (horses only up to the 29th of September, 1879), and sheep only from the 21st of December to the 21st of March, 1880. Purchasers to dress the dung, cut the thistles and leave the fences in good repair."

The grass was sold to eight different purchasers. The auctioneer proved that he had twenty-five years' experience in

the sale of grass in the district, and that it was the custom in selling grass that the vendor should pay all rates and taxes and that the purchaser should pay no outgoings, and that the sale was made free from all rates, tithes and taxes, and that he so stated at the sale.

After the sale became known, the respondents inserted the appellant's name in the rate book as occupier. No evidence was adduced to shew that the appellant had ever depastured any cattle on or had personally occupied the land in question.

The question for the Court was, whether the Justices were right in holding the appellant to be the occupier of the land from the 7th of May, and so liable to the rate.

Anstie, for the appellant.—Whether the appellant became occupier or not on the 25th of March, he ceased to be so when he sold the grass. The grant of *vestura terre* is a grant of the exclusive occupation of the land—*Oke's Institutes*. This was more than mere occupation, for the purchasers were to leave the fences in good repair. One test is to see who would be entitled to bring an action against a trespasser. There is no doubt that here the purchaser would. The owner parted with all rights of possession until March, 1880—*Allen v. The Overseers of Liverpool* (1); *Cory v. Bristow* (2); *The Queen v. Watson* (3); *Cox v. Glue* (4); *Wilson v. Mackreth* (5); *Burt v. Moore* (6).

Castle, for the respondents.—This is a question of evidence. The Court will look to see what was the intention of the parties, to shew the bearing of the evidence—*Smith v. St. Michael's, Cambridge* (7).

(1) 43 Law J. Rep. M.C. 69; Law Rep. 9 Q.B. 180.

(2) 2 App. Cas. 262; 46 Law J. Rep. H.L. 824.

(3) 5 East, 480.

(4) 5 Com. B. Rep. 533.

(5) 3 Burr. 1834.

(6) 5 Term Rep. 329.

(7) 30 Law J. Rep. M.C. 74.

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In *The Queen v. The Mayor of London* (8) it was held that the letting of the herbage did not divest the corporation as owners of an occupation.

Another consideration is that of permanency. That test is put in *The Queen v. St. Pancras* (9).

Lord Denman also, in *The Queen v. The Mayor of York* (10), points out that convenience is to be considered—*The Queen v. St. Mary Abbots, Kensington* (11). In addition here to the three points of convenience, permanency and intention, the contention that this is really a matter of fact for the Justices cannot be passed by. But if the case turns on facts the facts have already been found in respondents' favour.

[MANISTY, J., referred to *Crosby v. Wadsworth* (12) and *Jones v. Flint* (13) as to what is an interest in land within the Statute of Frauds.]

Anstie, in reply.—With regard to the case of *The Queen v. St. Pancras* (9) it may be observed that Mr. Willing the licensee could not have maintained an action of trespass.

On the point of permanency the occupation here was not merely transient. Being from May until March it had a character of permanency, and the tenants certainly had exclusive possession during that time.

MANISTY, J.—I am of opinion that our judgment should be for the respondents.

The facts of the case are that Mr. Mogg, being an owner of land, seems to have let it, and that the tenancy came to an end on the 25th of March, 1879. It is not necessary here to say whether the appellant then became the occupier of the land; but under ordinary circumstances when a tenant gives up his occupation, and no tenant succeeds him, the owner does then become the occupier, and I should not hesitate so to hold.

(8) 4 Term Rep. 21.

(9) 46 Law J. Rep. M.C. 243; 2 Q.B. D. 581.

(10) 6 Ad. & E. 422.

(11) 12 ibid. 584.

(12) 6 East, 602.

(13) 10 Ad. & E. 753.

But the real question here is whether the appellant ceased to be the occupier on the 7th of May—or, rather, whether he continued to be occupier after that date. On that day the sale of the grass took place. The question is, What took place on the 7th of May: did he demise or part with the occupation of the land to the eight persons, each of whom agreed to buy the grass on a portion of the land? We start with this fact, that the owner does not propose to let the land, but to sell the grass on a certain number of acres. The conditions which have been referred to are consistent with this fact. They all treat the transaction as selling the grass. There is one important stipulation also which says that the seller is to continue to pay rates, taxes, tithes and all outgoings. It is as if the owner said to the purchasers, "I sell you the right to turn your beasts in for a certain time upon my land." Now in my opinion the question is, What was the real nature of the transaction by which the purchaser bought that right? Was it the giving by the vendor of the exclusive possession of the land, or was it the giving a licence to the purchaser to turn his cattle in, the owner continuing to be the owner and occupier subject to such right?

I do not propose to go through the cases that have been cited. Those decided upon the Statute of Frauds do affect us somewhat, but I find nothing in any case which precludes us from looking at all the circumstances, and drawing inferences from them as to what the fact really was. The Justices here have come to the conclusion that there was no change of occupation effected by the sale of the 7th of May. The occupation of the appellant, which began in March, continued after May, subject only to the rights of the purchasers then created. And if there was any evidence of this we ought not to interfere, for it is a question of fact of which they are the judges.

The condition to which I have already alluded, that the vendor should pay all rates and taxes, is most important as shewing that the purchasers were not to be considered as tenants, the vendor retaining the obligations of an occupier;

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and however we might disregard this, as not being decisive of the legal position created by the sale, still we may take it into consideration as bearing somewhat on the intention of the parties. For these reasons our judgment must be for the respondents.

BOWEN, J., concurred.

Solicitors—Crowder & Co., for appellants; Guscotte, Wadham & Daw, agents for O'Donoghue & Anson, Bristol, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1880. { WALLINGTON (appellant) v. HOSKINS (respondent).
Dec. 1. { STONE AND OTHERS v. SAME.
 { PICTOR AND OTHERS v. SAME.

Highways—Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), s. 23—Excessive Weight and Extraordinary Traffic—Industry of Neighbourhood—Stone Quarries.

On complaint made by a highway authority against certain quarry owners to recover expenses alleged to have been incurred in repairing the damage done to the roads by the excessive weight and extraordinary traffic conducted by such quarry owners, it was found by the Justices that stone quarries existed and were worked in three parishes of the district of the said authority and in other parishes in the neighbourhood, and that the stone traffic was a recognised business in such parishes; that the stone was carried by the owners in waggon from four and a-half to six tons weight, and that such are the usual weights in the stone traffic; that since 1874 the roads had been formed and maintained with reference to the stone traffic of more expensive and durable materials than the neighbouring roads subject only to agricultural traffic.

On appeal against an order made by the Justices for the payment by the quarry owners of expenses as being extraordinary

expenses incurred by reason of excessive weight having passed along the road,—

Held, that there was no evidence upon which the Justices could find the weight to be excessive, and that they were right in finding that the traffic was not extraordinary within the meaning of section 23.

In determining whether "excessive weight" has been carried along a road, the Justices are to consider not what is the aggregate weight, but what are the conditions under which such weight has been carried.

CASE stated by Justices under 20 & 21 Vict. c. 43.

1. The respondent, John Hoskins, is the surveyor to the Trowbridge District Highway Board, comprising twenty-seven parishes, and being the authority which is liable or has undertaken to repair the highways hereinafter particularly described.

2. The appellant is a quarry master carrying on business at one of the quarries hereinafter mentioned, and using the said highways.

3. On the 24th day of March, 1879, the respondent, as such surveyor, certified to the said authority that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses had been incurred by the said authority in repairing the said highways hereinafter particularly described, by reason of damage caused by excessive weight passing along the same or extraordinary traffic thereon. An information or complaint having been exhibited, a summons was issued calling upon the appellant to appear before the Justices pursuant to the statute.

The hearing of the case was adjourned from the 22nd of April, 1879, to the 29th of May, 1879, and it was further adjourned to the 25th of June, 1879, on which day the respondent sought to recover in a summary manner from the appellant, as the person by whose order such weight or traffic had been conducted, the amount of such expenses from the 29th of September, 1878, to the 25th of March, 1879.

4. The following facts were proved before us, namely—The highways in question and the said quarry are shewn upon

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the annexed plan, headed Limpley Stoke, which is to be deemed as part of the case now stated.

5. The road between the letters A and B, which measures 1m. 0f. 8p., is in the Black Dog Turnpike Trust, but by a statute (being a Turnpike Continuance Act) the burden of repairing this part of the road falls upon the Trowbridge District Highway Board, although the turnpike trustees still take tolls up to the 1st of November, 1879. The road between the letters C and D, which measures 1m. 2f., was formerly a turnpike road, but has been disturnpiked, and the road from E to F, measuring 4f. 36p., is an ordinary parish road, which is also repaired by the said highway board.

6. The red circles on the said plan indicate two stone quarries, situate in the parish of Freshford, in the county of Somerset, and within the district of the Weston (Bath) Highway District Board, to which the said two quarries are rated. The black circle represents a stone quarry in the parish of Simpley Stoke, in the county of Wilts, and within the district of the Trowbridge District Highway Board. The quarry numbered 3 belongs to the appellant, that numbered 2 belongs to Messrs. Pictor & Sons, and that numbered 1 belongs to Messrs. Stone Brothers.

7. Similar stone quarries exist and are worked in two other parishes of the district of the said authority, namely, at Monokton, Farleigh and Westwood, and also in the parishes of Box and Corsham, within the district of another highway authority in the neighbourhood, namely, in the Chippenham district, and the stone traffic is a recognised business in the before-named parishes. The quarry of the appellant in the parish of Limpley Stoke was opened many years since, but in or about the year 1871 additional quarries were opened by the other parties herein-after mentioned, and the business has much increased at the quarry of the appellant as well as at such new quarries. It has not been more extensive since the passing of the Highway and Locomotive Amendment Act, 1878, than it was previously thereto. The said business is of a permanent character, and is likely to be

so while a demand for Bath building stone continues and so long as the stone can be obtained. The available supply is very large.

8. The appellant, who is occupier of the said stone quarry No. 3, hauls the stone gotten by him from the quarry to the railway station, which is also marked on the said plan. The stone is taken by the appellant in loads which, with the waggons, vary from four and a-half tons to six tons in weight, drawn by from three to five horses. These are usual weights in the stone traffic. The wheels of the waggons are from four and a-half inches to six inches in breadth. Particulars of the loads for a certain period were produced on the hearing of the summons, and are hereafter set forth.

9. The wheels of the greater breadth are covered or bound with two tires, of which the inner is three and a-half inches, or thereabouts, in width, and the outer is two and a-half inches, or thereabouts, in width, and the waggons, with regard to the wheels as well as in other respects, are constructed in the manner usually adopted for stone waggons.

10. Parts of the roads from E to F, and from C to the railway station respectively, consist of hills which in certain parts are so steep that it is necessary to fasten the wheels of loaded waggons descending such hills, for which purpose both hind wheels of the waggons are chained and brakes are applied. This is done in the ordinary way. The dragged wheels wear the roads very rapidly, and frequent relaying of metal is necessary.

It is necessary to use hard stone, which can only be obtained from a distance, and is more expensive than the local stone which was used for the same highways before the increase of the stone traffic. The highways subject to agricultural traffic only require little or no repair in the summer, but the highways subject to stone traffic require repair in the summer as well as winter.

11. Portions of the road from E to F are so narrow that, except at intervals, two vehicles cannot pass each other.

12. That portion of the said highway from A to B, when taken to by the said

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highway board, at the end of 1875, was not in good repair, and the expenses were increased for the year 1876-77; but the cost of repairing the said highway over which the stone traffic passes is under any circumstances greater than would be necessary if the highways were not used for the stone traffic or other continuous traffic. It is admitted that at the present time there is but little traffic on the highways in the parish of Limpley Stoke beyond the stone traffic and the traffic of an agricultural neighbourhood.

13. The cost of repairing the highways in the parish of Limpley Stoke from the year 1870 to the present time has been as follows; that is to say—

For the year ending the 31st of December,			
1870 Cost of repairing Limpley Stoke roads, three miles, except between A B and C D	£	s.	d.
1871 Cost of repairing same, except between A and B—4½ miles	17	12	3
1872 Ditto, ditto	25	12	5
1873 Ditto, ditto	27	18	1
1874 Ditto, ditto	65	5	11
1875 Ditto, ditto	149	0	3
1875 Ditto, and also road from A to B from the 1st of November, 1875, to the 31st of December, 1875	340	3	0
1876 From the 1st of January to the 25th of March			
For the year ending the 25th of March, 1877, including road from A to B—5½ miles	534	7	3
Ditto, ditto, 1878	498	15	7
Ditto, ditto, 1879	414	10	11
For the year ending the 25th of March, 1880	407	17	6

Contracts had been accepted for repairs during the current year.

Since the year 1874 the roads have been repaired with more durable materials than were previously necessary, and consequently more expensive, the local stone having sufficed. The roads have in fact been formed and maintained with reference to the stone traffic; and it is estimated that the last-mentioned contract represents the usual cost of maintaining them for such traffic. It is estimated by the respondent to be the minimum cost so long as the stone traffic continues as at present.

14. Such of the highways in the neighbourhood as are subject to agricultural

traffic only cost a yearly sum of from 13*l.* 10*s.* to 21*l.* 5*s.* per mile per year for repairs; but such of the highways in the neighbourhood as are subject to stone traffic cost a yearly sum of about 130*l.* per mile; and such of the highways in the neighbourhood as are subject to other continuous or heavy traffic, cost sums varying, according to the nature and extent of the traffic, up to 70*l.* per mile per year, which is the cost in the town of Trowbridge, containing a population of 12,000 persons or thereabouts.

15. The following is a detailed statement of the stone taken by the appellant from his said quarry between the 8th of February and the 1st of March, 1879, shewing the weight of each load and the number of horses drawing the same, and also shewing which loads consisted only of one block of stone; that is to say—

[The case then set out in a tabular form the number of journeys and weights carried, from which it appeared that the heaviest single load of stone was 4 tons 12 cwt. 2 qrs. The greatest total weight that passed over the road on any one day was 31 tons 15 cwt. The largest single stone carried contained 59 cubic feet and weighed 3 tons 13 cwt. 3 qrs.

The waggons weigh from a ton to a ton and a-half in addition to the load of stone carried thereon.]

16. It was agreed by the respective parties that traffic between the passing of the said Act and the date of the said certificate should be deemed to be fairly represented by the traffic for the period between the 1st day of February and the 8th day of March, 1879, as hereinbefore set forth.

17. Two other quarry masters use the same highways for stone traffic, at the same time as the appellant and to a greater extent, and the traffic of all the parties is intermingled in the ordinary way. Orders were made against the other quarry masters at the same sessions as the order against the appellant was made.

18. The appellant has paid tolls to the turnpike trustees for the stone carried over the road from the letters A and B on the plan, but this turnpike trust

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expired on the 1st day of September, 1879, which was subsequently to the hearing of the said summons.

19. Upon the foregoing facts it was contended on behalf of the respondent that the stone traffic as before described was extraordinary traffic within the meaning of section 23 of the Highway and Locomotive Amendment Act, 1878; and that the weights passing along the roads as aforesaid were excessive within the meaning of the same section; and that the said highway board had incurred extraordinary expenses within the meaning of the said section.

The appellant on the other hand contended—(a) That the stone traffic is a regular, continuous and ordinary traffic arising from the usual business of the neighbourhood, and is not extraordinary within the meaning of the said section; (b) that the said weights were not excessive within the meaning of the said section; (c) that the expense incurred in repairing the said highways under the circumstances hereinbefore set forth were not extraordinary expenses; (d) that under the circumstances hereinbefore set forth no damage could in point of law be attributed to the traffic of the appellant as distinguished from that of the other quarry masters; and (e) that the Justices could not in point of law convict the appellant of causing damage by reason of excessive weights passing along the highways without evidence that particular weights had been excessive and had caused damage, and that the frequent repetition of ordinary loads could not in point of law constitute an excessive weight. We were of opinion—

1. That the said traffic was not extraordinary within the meaning of the said section.

2. That the said weights were excessive within the meaning of the section.

3. That extraordinary expense had been incurred by reason of damage caused by excessive weights within the meaning of the said section.

We therefore ordered the appellant to pay to the respondent the sum of 15*l.* with the alternative of seven days' imprisonment in case of default.

The questions for the opinion of the Court are—

1. Whether or not there was evidence to support our decision that the said weights were excessive within the meaning of the said section.

2. Whether or not there was evidence enough to support our decision that extraordinary expense had been incurred by reason of damage caused by excessive weights within the meaning of the said section.

3. Whether or not our decision that the said weights were excessive was correct in point of law.

4. Whether or not our decision that extraordinary expense had been incurred by reason of damage caused by excessive weights was correct in point of law.

If either of the said questions is answered in the negative the order is to be quashed. If all or any are answered in the affirmative the order is to be enforced.

It was agreed that the facts stated in the other two cases against the same respondent were identical, and they were not argued separately.

A. Charles (A. R. Poole with him), for the appellant.—I rely strongly here on the finding of the Justices that the traffic was not extraordinary, and it is contended that the finding was a right one, because it recognises the carting of stone from the quarries as being part of the ordinary traffic of the neighbourhood; but if that be so, then the weight of these trollies, which are of the kind used by others, and are of the usual size and weight, cannot constitute "excessive weight" within this Act. The section means some particular excessive weight beyond that usually put upon the road. The finding of fact is that these were usual weights, and that the road had been formed with reference to the stone traffic. *Lord Aveland v. Lucas* (1) shews what is the standard of comparison. Grove, J., says that "weight" is used with reference to the road itself, and the section

(1) 49 Law J. Rep. C.P. 643; Law Rep. 5 C.P. D. 211, 351.

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means "weight and traffic which are abnormal and beyond the ordinary traffic on the road;" and Lindley, J., says, "It is the ordinary nature of the traffic over the road which is to be the standard." The next point is that these were not extraordinary expenses; that is really settled by paragraph 14 of the case.

[LORD COLERIDGE, C.J. — Unless the traffic is extraordinary or weight excessive, there cannot be extraordinary expenses within this section.]

No; but even if the Justices were held to be right in their second finding as to the weight, there were not, in fact, any extraordinary expenses, having regard to the cost of the highways in the neighbourhood.

Patchett (Lopes with him), for the respondent.—The only question is, whether there was any evidence of excessive weight within the Act. The Justices have based their decision on the continuous sending of heavy weights by the appellants along the road. It is submitted that their finding as to extraordinary traffic means that the kind of traffic—that is, of carting stone—was not extraordinary; and that being so, their second finding is, in effect, that in degree it was excessive, and that its excess was in respect of the weight of the trollies when sent in such numbers. The words "excessive weight" cannot be limited to one particular occasion, but the Justices are entitled to consider the increased aggregate of weights. It is found that the quarries have lately increased, and so, where one trolley was used, now there are thirty. In paragraph 17 it is stated that thirty tons passed in one day. It cannot make the difference between liability and no liability that the weight, which is as a whole excessive, passes in successive divisions. The road may be just as much damaged.

[FIELD, J.—At what time are you to take the standard of ordinary traffic? Must it not be at the time when you want to impose the rate?]

Persons cannot obtain exemption from the necessity of making compensation for damage by multiplying the traffic and the weights, and then saying that they are the ordinary ones, because they

existed at the time for which compensation is asked.

LORD COLERIDGE, C.J.—I am of opinion that in this case the judgment of the Justices must be reversed. They have, in fact, sent to us three findings. With one of them we are both satisfied, and I for myself think that the finding on the first point really concludes the others. The case arises under section 23 of the Highways and Locomotives Amendment Act, 1878. [His Lordship then read the section.]

In the parish in question it seems that there are five or six stone quarries which are worked, and, in consequence of the use of trollies carrying large blocks of stone from the quarries through the parish to railway stations and other places, it is necessary that the roads in that district should be made of harder material than the common Bath stone which suffices for agricultural traffic, and naturally the roads, even when so made, wear out more rapidly than in an ordinary agricultural neighbourhood. Those are the only facts with which, in my opinion, it is necessary for us to deal.

Now, it was contended before the magistrates, that the traffic of the appellant, in carting stone from his quarry, was "extraordinary traffic" within this section; but they found, and, as I think, rightly found, that it was not. They held that there was, having regard to the industry of the district, nothing extraordinary in the traffic of the appellant.

But they go on to say that if, as a matter of law, they can find that the passage of these stone-laden trollies over the roads was the passing of "excessive weight" within the meaning of the same section, they decide that extraordinary expenses have been incurred in repairing the highways by reason of the damage caused by such excessive weight.

I agree in the view expressed during the argument, that these two latter points are practically one, for if the weight is excessive and does damage, then the expenses of repairing the damage are, of course, extraordinary ex-

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penses; and it follows that, if the weight here was not excessive, the expenses incurred were not extraordinary.

The question, then, is, Was the weight excessive? The facts being that a certain number of tons were carried in each waggon, and that those waggons were of the usual and proper kind employed for stone carting in the neighbourhood, and were of the usual weight, and that the roads had been constructed and strengthened of late years with a view to bearing this kind of traffic, it is said, on the part of the appellant, that there is no evidence to shew that at any time the weight passing along the road was excessive; although, if the roads were in a purely agricultural district, having roads suited to agricultural traffic, these trollies might be excessive in weight compared with the agricultural waggons; but that the standard of comparison here must be the trollies of the other quarry owners and the character of the road. I agree in this contention. It seems to me that, directly the Justices have found that this stone quarrying is the industry of the neighbourhood, and that it has been carried on by the appellant in the ordinary way, the case is decided.

But then, on the other side, it has been argued that there is a fallacy in so limiting the words "excessive weight," because the section means to include the continuous and repeated passing of what admittedly are heavy weights, and which by reason of such repetition become excessive. This cannot, I think, be the true construction of the statute. When called on to decide whether excessive weight has passed along a road, the Justices are to consider not what is the aggregate weight, but what are the conditions under which such weight has been carried. Upon these facts, therefore, there was nothing from which the Justices could find that these weights were excessive.

I feel that we are deciding this case in full accordance with the judgment of the Common Pleas Division in *Lord Aveland v. Lucas* (1), affirmed in the Court of Appeal. Nothing can be clearer or better than the words of Mr. Justice

Lindley, which I desire to adopt. He says, "It appears to me that those words must mean excessive and extraordinary with reference to the ordinary use and traffic upon and over the road. If anything is done of an unusual and extraordinary kind, the person doing it must pay for the damage thereby occasioned. It is the ordinary nature of the traffic over the road which is to be the standard."

I therefore think that the decision of the Justices must be reversed.

FIELD, J.—I concur in the judgment and reasoning of my Lord. Before we can construe such words as "excessive" and "extraordinary," we must see what is normal and ordinary. Now, the subject here being the repair of highways, and the duty of the highway authority being to repair the roads up to the standard for which they are used, the facts found here seem to me to be conclusive against this traffic being extraordinary or this weight excessive.

The road was metalled, and calculated to resist a pressure of four or five tons at a time, and no weight above that was sent over it by the appellant. Though he may have sent thirty tons over it in the course of a day, yet that cannot be treated just as if it had all been weighing at the same time upon the road, in the face of the fact that, following the normal system, to meet which the road was constructed, he subdivided it into moderate loads of four or five tons each.

Order of Justices quashed.

Solicitors—Whites, Renard & Co., agents for H. Brittan, Press & Inskip, Bristol, for appellants; Whitakers & Woolbert, agents for Clark & Collins, Trowbridge, for respondents.

[CROWN CASE RESERVED.]

1880. }
Dec. 4. } THE QUEEN v. SALMON.*

Manslaughter—Joint Wrongdoers—Culpable Negligence.

The prisoners A, B and C went into a field in proximity to highways and houses, taking with them a rifle. B placed a board, which was handed to him by A in the presence of C, in a tree in the field as a target. All three fired shots directed at such target from a distance of 100 yards. One of the shots thus fired killed a boy in a tree in a garden at a spot distant 393 yards from the firing point. No precautions were taken to prevent danger from such firing. It was proved that the rifle was sighted at 950 yards, and would probably be deadly at a mile. There was no evidence as to which of the prisoners fired the fatal shot. The prisoners were all found guilty of manslaughter:—Held, that all three prisoners were rightly convicted of manslaughter, because they had been guilty of a breach of duty in firing at the spot in question without taking proper precautions to prevent injury to others.

CASE reserved by Lord Coleridge, L.C.J.:—

The three prisoners—George Salmon, John Salmon and Hancock—were tried before me on the 27th of July, 1880, for the manslaughter of William Wells, a little boy of ten years old, under the following circumstances:—

George Salmon is a member of the Frome Selwood Rifle Corps. On the 29th of May he attended the rifle practice. He took his rifle from the armoury; had fourteen ball cartridges served out to him, and fired them all away. After the practice was over he took away with him his rifle, which it was his duty to return to the armoury. He did not take it back, and the drill instructor missed six cartridges from the magazine when he went there about half an hour after the practice was over.

About seven o'clock—that is, shortly

after the practice was over—the three prisoners came together to the house of a witness (Newport), who was called, and whose evidence, so far as it is material to the point to be determined, was as follows:—

“The three prisoners came to my father’s house somewhere about seven in the evening on the 29th of May. George Salmon had a rifle with him and some ball cartridges. All three wanted to fire off one or two shots, and they asked me for something to fire at. I gave them a board from our fowl house. I went with them to a field close by, and the prisoner Hancock climbed into a tree. George Salmon handed up the board to him. Hancock fixed it in the tree about eight feet from the ground. They all went about 100 yards up the field, and all laid down in the grass. I heard two shots. I cannot tell which of them fired the shots, for I was looking at the board. I am not sure whether the first shot struck the target; the second shot did strike it. I do not know which of them fired it. Two more shots were fired afterwards, when Wells and Knight came running up and told us what had happened.”

The place where the shot was fired and all the surrounding houses and roads are correctly delineated in a plan which was proved before me and marked by me at the time. To that plan I beg leave to refer the Court as conveying a clearer view of the place and its surroundings than any statement of mine could convey.

“What had happened,” to use the words of the witness Newport, was this: The deceased William Wells was with his young sister in his father’s garden, and her evidence was as follows:—

“I remember the evening of the 29th of May. There is a low apple tree in my father’s garden, with a rose tree in it. My brother got up into the apple tree to water the rose. While my brother was in the tree I heard a shot; it passed through the tree, for some of the leaves fell down from the tree. I called to my brother, but he answered me and said he was safe. Then there was another shot, and my brother fell out of the tree dead on the ground. There were four or five shots

* *Coram* Lord Coleridge, L.C.J.; Field, J.; Lopes, J.; Stephens, J.; and Williams, J.

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fired altogether, I think; the second shot killed him."

It was proved that the distance from the spot where the shot was fired to the tree in which the boy was killed was 393 yards, but the rifle was sighted for 950 yards, and would probably be deadly at a mile.

The evidence of conversations after the death had been caused, as to the person who fired the shot, was as follows:—

Joseph Wells, the father of the little boy, the first person who came to the prisoners after the shot, said, "When I first came up I saw Hancock and Newport and John Salmon. I told them what had been done, and that they had killed my boy. They seemed very sorry and wished they had not done it. I asked them where the rifle was. They said it was flung down in the field, but we could not find it. I left Hancock and John Salmon in charge of Knight."

Jonathan Knight said, "I saw the three prisoners with Newport in the field. I called to them to stop firing. I came on Hancock and Newport and John Salmon. I saw George Salmon at first, but he was not there when I came up. I told them they had killed a boy; and I said, 'Where is the gun?' They went back to find it, and could not, and said that George must have taken it away."

William Parsons said, "I went to Newport's house. There I saw Hancock and John Salmon. I went with them to the field, and they shewed me the tree in which was the target. The bottom of the target was about ten feet from the ground. I took John Salmon and Hancock to the police station. Then I went to George Salmon's. He said, when I took him into custody, 'Don't blame my brother for it, it was I that did it.' I took him to the station. When the three were together there George Salmon said, 'I fired the shot.' Hancock said, 'Yes, we all three fired one each.' George said, 'I fired the first shot, and it must have been I that killed the poor boy.'"

The rifle was afterwards found in George Salmon's house, and it and two cartridges found in the field were iden-

tified by the drill inspector—the rifle as being the rifle George Salmon ought to have returned to the armoury on the evening of the 29th of May; the cartridges as cartridges similar in all respects to those, six of which he had missed from the armoury on that evening.

The jury found all the prisoners guilty of manslaughter.

The question reserved for the opinion of the Court was, whether there was any evidence upon which either or all of the prisoners could be convicted of manslaughter.

No counsel appeared for the prisoners.

Norris, for the prosecution. If it were possible to identify the prisoner who fired the fatal shot he would be guilty of manslaughter. The other two prisoners went with him to the field for a common purpose, which was highly dangerous in the absence of proper precautions. They took no precautions to prevent danger to others from the firing of the rifle. They were all guilty of culpable negligence in firing at a target in such a position, and across three highways.

LORD COLERIDGE, L.C.J.—The conviction is right and must be affirmed. If a person will, without taking proper precautions, do an act which is dangerous, even though not an unlawful act in itself, and if in the course of it he kills another person, he does a criminal act which in the law amounts to manslaughter. The prisoner who fired the fatal shot committed manslaughter; but as the other two joined in the act and fired shots also they are all guilty of manslaughter.

FIELD, J.—I am of the same opinion. There is a general duty to the public not to use a weapon likely to cause death or injury without taking proper precautions to avoid injury. The evidence shews that that duty was not observed. The character of the place and the probability of persons being about were such that I am satisfied the conviction was right.

LOPES, J., concurred.

STEPHEN, J.—I am of the same opinion. Manslaughter is unlawful homicide not amounting to murder. One of the cases

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in which homicide is unlawful is where it is caused by the culpable omission to discharge a duty tending to the preservation of life. There is a duty to take proper precautions in the use of dangerous weapons or things. It is the legal duty of everyone who does any act which, without ordinary precautions, is, or may be, dangerous to human life, to employ those precautions in doing it. In the present case no such precautions were taken.

WILLIAMS, J., concurred.

Conviction affirmed.

Solicitors—Prior, Bigg, Church & Adams, agents for Crutwell, Daniel & Crutwells, Frome, for prosecution.

[IN THE QUEEN'S BENCH DIVISION.]

1880. } *In the matter of an action between*
Dec. 2. } JOHN MORGAN and JOHN REISS.

Practice—County Courts Act, 1875 (38 & 39 Vict. c. 50), s. 6—General Request to County Court Judge to take Notes—Signature of Judge.

In order to entitle a party to obtain signature of a County Court Judge's notes under section 6 of the County Courts Act, 1875, there should be a request to make a note of the questions of law intended to be raised. A mere general request to such Judge upon a case coming on for hearing to take notes of the evidence is not sufficient.

This was a rule calling upon the County Court Judge of the Aberystwith County Court to shew cause why he should not re-enter a case on his list, and also sign certain notes taken by him in an action.

The rule was originally moved for on affidavits from which it appeared that the action in question—which was for the delivery up of certain title-deeds, and had been transferred from the Chancery Division to the County Court—had been adjourned by the consent of the parties, but had nevertheless been called on and

struck out of the Judge's list in the absence of the parties and without a hearing. From an affidavit made by the learned Judge, however, it appeared that the action was partly tried in the County Court on the 14th of May, and was adjourned to the next Court, held on the 17th of July, when the plaintiff's case was alleged to have been closed, and at the subsequent Court the Judge nonsuited the plaintiff.

As regards the Judge's notes the facts were as follows: An application was made to him when the case came on for hearing to take notes of the evidence, "as it was an important case and might be taken to appeal." The Judge took rough notes, but objected to produce them inasmuch as they were not taken for the purpose of an appeal, but for his own use only, and such notes were consequently imperfect and would be misunderstood.

A. Cohen (Tindal Atkinson with him) shewed cause.—There is no power to compel a County Court Judge to re-enter a cause. As regards the signing of the notes, there is no duty on the part of the learned Judge to sign any notes except such as are specified in section 6 of the County Courts Act, 1875. The Judge was not asked at the trial to make a note in accordance with section 6 of the statute. In order to comply with the requirements of that section there must be a request to make a note of some question of law raised. A general request, such as was given here, would frequently entail upon a County Court Judge an enormous amount of unnecessary labour (1).

(1) By the County Courts Act, 1875 (38 & 39 Vict. c. 50), s. 6, at the trial or hearing of any cause in a County Court, on which there is a right of appeal, "the Judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, . . . and he shall at the expense of any person or persons being party or parties in any such cause . . . requiring the same for the purpose of appeal, furnish a copy of such note, . . . and he shall sign such copy, and the copy so signed shall

In the matter of an action between John Morgan and John Reiss, Q.B.

Holl (Terrell with him) supported the rule. It is contended that a proper request was made to the County Court Judge under section 6; at all events such a request was, under the circumstances, unnecessary—*Seymour v. Coulson* (2). They also cited *Ex parte Furber* (3).

LORD COLERIDGE, C.J.—I am of opinion that this rule must be discharged. As regards the first branch of the rule I am clear that we have no such jurisdiction as we are asked to exercise, altogether apart from the facts as disclosed to us upon the affidavits. We do not sit here to correct judicial misconduct, even where it exists, and the remedy of a suitor in such a case is by appeal to the Lord Chancellor.

But then it has been argued that we may at all events compel the County Court Judge to sign the notes which he has taken. That we have the power to do so where the requirements of the statute have been duly complied with, I have no doubt at all. Here, however, in my judgment, the County Court Judge was not asked within the terms of the 6th section to take any notes at all. As a matter of fact he did, it appears, take some notes—whether complete or not is immaterial—and these we are now asked by the plaintiff to the action to compel him to sign. The County Court Judge has objected on principle to sign these notes—first, because he was not bound to sign them, as he was not properly asked to make them, and they were not made for the purposes of appeal; and, secondly, the notes were imperfect and would mislead—in a word, were not such notes as he would have taken had the demand been

be used and received on such motion and at the hearing of such appeal." By an Order of the 22nd of January, 1877, no motions "shall be made by way of appeal from any County Court unless a copy of the Judge's notes, signed by the Judge, shall have been handed to the proper officer in Court, unless otherwise ordered."

(2) 49 Law J. Rep. Q.B. 604; Law Rep. 5 Q.B.D. 359.

(3) 3 Hurl. & N. 521; 27 Law J. Rep. Exch. 453.

made upon him according to the statutory requirements. Mr. Holl has argued that the Judge is bound to sign these notes, and he has done so partly on the construction of the County Courts Act, and partly on the authority of *Seymour v. Coulson* (2).

Now, so far as Mr. Holl's argument has reference to the County Courts Act, 1875, it clearly, in my judgment, fails. That statute, after laying down certain rules, proceeds to state that at the trial or hearing "the Judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the cause, suit or proceeding; and he shall at the expense of any person or persons, being party or parties in any such cause, suit or proceeding, requiring the same for the purpose of appeal, furnish a copy of such note . . . and shall sign such copy." That section only deals with notes taken by the Judge with reference to a point of law and facts connected with it, and has no application to the present case. But it has been urged that there is a decision of the Court of Appeal which supports the plaintiff's contention, and if there had been such a decision it would be binding on this Court. But all that *Seymour v. Coulson* (2) decided was this, that it is not a condition precedent to the right of appeal that the Judge should have been requested to make a note. I don't see how the decision in that case can help Mr. Holl when the question is whether a statutory duty limited by the express words of the statute can be enforced, which, except for the statute, could not be enforced. I think for the reasons I have given that this portion of the rule should also be discharged; and I may add that no harm will be done, for if upon the hearing of an appeal any injustice is likely to be done by the absence of a County Court Judge's notes, the Court has power to dispense with them.

FIELD, J.—I am of the same opinion. As regards the first point, I never entertained the slightest doubt that we had no jurisdiction to call upon the County Court

In the matter of an action between John Morgan and John Reiss, Q.B.

Judge to re-enter the cause on the list. With reference to the other point I own I have entertained some doubt, but upon consideration I agree with my Lord, and think we ought not to compel the Judge to sign these notes. A mere request to a Judge to take notes of the evidence does not intimate to him that there will be a point of law raised. The County Court Judge did in the present case take notes for his own information, "but," he says, "I was never asked to take notes with reference to any point of law, and I accordingly object to produce them because they are not such as would have come into existence had I known of the point of law intended to be raised." The doubt which I entertained arose in consequence of the decision in the Court of Appeal. But my Lord's view of that decision is, I think, the correct one. At one time I thought the appellants might be unfairly prejudiced on the hearing of the appeal, but the Rules of Court sweep away a grievance of this kind.

Rule discharged.

Solicitors—J. B. Barrett, agent for Griffith Jones, Aberystwith, for applicant; Bolton, Robbins & Busk, agents for Howell & Evans, Machynlleth, for County Court Judge.

[IN THE QUEEN'S BENCH DIVISION.]

1880. { DEBENHAM (appellant) v. THE
Dec. 1. { METROPOLITAN BOARD OF WORKS
(respondents).

Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), ss. 72, 73, 97—Dangerous Structure—Party Wall—Expenses of securing Dangerous Structure, how estimated—Liability of One Owner of Party Wall.

The owner of premises bounded east and west by party walls, having pulled down the interior, the Metropolitan Board of Works gave notices to him and to the joint owners of the party walls on either side, under section 72 of the Metropolitan Building Act, 1855, to take down, secure and shore up

the party walls as dangerous structures. The owners did nothing, and the board did the work themselves, employing a builder at prices fixed by a running contract between themselves and him, entered into some time previously. This contract caused the amount paid by the board to be in excess of the market price of such work at the time it was done.

The board then summoned the first-mentioned owner alone in respect of the whole sum, whereupon he objected that the board could only claim the amount which the work was worth at the time it was done; and secondly, that he was only liable for his proportion, and that the other owners should have been summoned also for payment of their respective shares:—

Held, that the magistrate was right in overruling both objections, and making the order for "all expenses incurred," leaving the appellant to get contribution from the other owners.

CASE stated by Justices under 20 & 21 Vict. c. 43.

1. The appellant, Thomas Nunn Debenham, is owner of premises known as No. 8 Great Queen Street, Long Acre, in the county of Middlesex.

2. In or about the month of November, 1878, the appellant took down the house then upon the said premises, with the exception of the west and east walls, which formed the west and east party walls respectively, separating the said premises on the west from premises known as No. 9 Great Queen Street, and on the east from premises known as No. 7 Great Queen Street.

3. On the 9th day of January, 1879, an order was made by Sir James Ingham, Knight, one of the magistrates of the police courts of the metropolis, that the said appellant should take down the party wall on the west side as far as cracked, bulged or otherwise defective, or otherwise secure the same to the satisfaction of Charles Foster Hayward, the surveyor appointed by the Metropolitan Board of Works. An order in the like terms, or to the like effect, was at the same time made upon the owner or occupier of No. 9 Great Queen Street.

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4. Neither the appellant nor the owner nor the occupier last mentioned having complied with the said order, the said board subsequently, in or about the month of March, 1879, entered and took down the said party wall on the west side.

5. On the 18th day of March, 1879, the said board, by notice in writing, required the appellant to "underpin, repair or otherwise secure the party wall (with No. 7 Great Queen Street)—that is, the east party wall aforesaid, as far as loose, decayed or otherwise defective. Also to shore up the said party wall with three sets of raking shores immediately." A notice in the like terms or to the like effect was at the same time served by the said board upon the owner or occupier of No. 7 Great Queen Street.

6. Neither the appellant nor the owner nor the occupier last mentioned having complied with the said notice, the board subsequently, in or about the month of March, 1879, entered the appellant's premises—No. 8 Great Queen Street—and erected three sets of raking shores against the east party wall thereof.

7. On the 6th day of March, 1879, an order was made by James Vaughan, Esquire, one of the magistrates of the police courts of the metropolis, that the appellant should "take down, underpin or repair the party wall (with No. 7 Great Queen Street)—that is, the east party wall aforesaid, as far as loose, decayed or otherwise defective, or otherwise secure the same to the satisfaction of Charles Foster Hayward, being the surveyor appointed by the said board."

8. The appellant did not comply with the said order in respect of taking down or underpinning, but he repaired the said party wall in so far as loose, decayed or otherwise defective, and otherwise secured the same to the satisfaction of the said surveyor.

9. On the 4th day of October, the said board demanded of the appellant the sum of fifty-five pounds, nineteen shillings and sixpence (55*l.* 19*s.* 6*d.*), in accordance with the terms of an account transmitted with the demand. The said account consisted of two items, among others—to wit, an item of fourteen pounds, eight

shillings and twopence (14*l.* 8*s.* 2*d.*), in respect of expenses incurred in taking down the west party wall; and an item of thirty-seven pounds, twelve shillings and fourpence (37*l.* 12*s.* 4*d.*), in respect of expenses incurred in shoring the east party wall aforesaid.

10. On the 9th day of April a summons by the said board in respect of the sum of 55*l.* 19*s.* 6*d.* aforesaid, and which the appellant had on demand neglected to pay, was heard before me, one of the magistrates of the police courts of the metropolis.

11. Upon the hearing of the said summons I was of opinion that I was bound under the Metropolitan Building Act, 1855, to make an order for the full amount claimed by the board, it having been proved that the board had incurred expenses to that amount under a contract which they had entered into for such works, but that the contract price was at the time of executing the works aforesaid in excess of the then market price; but I considered I was not empowered to reduce the amount of the expenses actually incurred by the board under the circumstances above mentioned, and thereupon made an order for the full amount claimed.

12. I further held that I could not, as was contended on the part of the appellant, deduct any sum that might be due by way of contribution from the owners or occupiers of No. 7 or No. 9, neither were such owners or occupiers summoned to appear or did appear before me, nor was any evidence given to enable me to determine the proportions (if any) which such owners or occupiers ought to contribute.

13. The question for the opinion of the Court is, whether the order of the 9th day of April, 1880, for the amount of 55*l.* 19*s.* 6*d.* was upon the facts stated properly made.

I. S. Leadam, for the appellant.—This being a party wall there are two owners, and the magistrate could not make the order for the whole expenses on one only. Section 97 defines owner, and the magistrate ought to have required the other owner to be present, as the

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intention of the Act is to make all those liable pay fairly. But, secondly, the owner can only be liable for the proper cost of doing the work—the price which it would have cost him at the time if he had done it himself. These expenses were thirty per cent. above market price—see *Bayley v. Wilkinson* (1), where the judgment was based on the fact that the owner was in default; but here the owner is not in default. By section 72 the Board of Works had the duty of shoring up cast upon them.

[FIELD, J.—The board have actually paid the money which they claim from the appellant.]

Yes; but before the magistrate makes the order he ought to be satisfied that the amount is the proper market price. The board cannot, by entering into a contract for their own convenience, bind the appellant to pay a higher sum than the magistrate finds to be the proper sum.

[LORD COLERIDGE, C.J.—It comes to be a question whether it was reasonable for the board to enter into the contract. It has not been found to be unreasonable.]

Paragraph 11 amounts to such a finding—only the magistrate thought he was bound to make the full order.

Biron, for the respondents, was not called on.

LORD COLERIDGE, C.J.—I am of opinion that the magistrate was quite right on both points, both as to the 11th and 12th paragraphs.

The first question is, whether he could give less than the amount of expenses incurred under section 73 of the Metropolitan Building Act; because he was satisfied that if he was not compelled to make the order for the full amount claimed by the board as having been paid by them under the running contract which they had with a builder, it would have been possible at the time when it was executed to have got the work done at a less price.

He does not say that the contract was an unreasonable one for the board to enter into, or that the price was unreasonable. It is therefore left to us to say

simpliciter whether these expenses were unreasonable because of the contract which involved the payment of a sum above the market price at the particular time when the work was done.

I think that the words of section 73 are clear and imperative, and therefore that the magistrate was bound to make the order for the amount proved to have been expended.

The second point is, whether the magistrate ought to have had more persons than the owner of the dangerous structure before him, because the dangerous structure was a party wall. I am of opinion that he was not bound. The policy of the Act is to ensure that for public safety dangerous structures should be taken down, and notice is given to enable the owner if he pleases to take down or shore up so as to make everything safe; but in order that the risk may not continue the board are empowered to act at once if he does not.

Now here the work having been done by the board, the magistrate had before him the owner of the dangerous structure upon whom he was asked to make and did make the order. It is said that there were other owners within the definition in section 97 who were not present but should have been. I do not doubt that if there are more owners than one of a dangerous structure they are all liable to pay, but it is enough for the magistrate to have an owner before him, and he may make the order on him, leaving him to get contribution from the other owners if there are any.

FIELD, J., concurred.

Order affirmed.

Solicitors—T. G. Bullen, for appellants; R. Ward, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1880. }
Dec. 11. }

THE QUEEN v. GAUNT.

Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 91—School Board Election—Corrupt Practices—Penalty and Disqualification on Conviction—Summary Jurisdiction of Justices.

Justices sitting at petty sessions have summary powers to deal with offences under section 91 of the Elementary Education Act for corrupt practices at school-board elections, the words "upon conviction" in that section being equivalent to "upon summary conviction."

This was a rule calling upon certain Justices to shew cause why a certain conviction made by them at petty sessions should not be quashed for want of jurisdiction.

The applicant had been summarily convicted of a corrupt practice within the Elementary Education Act (33 & 34 Vict. c. 75), s. 91, which enacts that "Any person who at the election of any member of a school board, or any officer appointed for the purpose of such election, is guilty of corrupt practices, shall, on conviction, for each offence be liable to a penalty not exceeding two pounds, and be disqualified for the term of six years after such election from exercising any franchise at any election under this Act, or at any municipal or parliamentary election."

No counsel appeared to support the conviction, but

Tunnard Moore appeared in support of the rule.—The Justices have no doubt jurisdiction at petty sessions under the 92nd section in the case of "any penalty and any money which under this Act is recoverable summarily, and all proceedings under this Act which may be taken in a summary manner;" but the terms of the 92nd section have no application to offences under the 91st section. Where the Legislature has intended to confer upon Justices a summary power, the words "upon summary conviction" have been used—see sections 87, 88, 89, 90. The offences under the 91st section are

of a grave character, involving a disqualification to vote at elections for a lengthened period; the word "summary" is therefore omitted, as it was intended that proceedings should be by indictment.

LORD COLEBRIDGE, C.J.—I think that this conviction was right, and must be affirmed. Mr. Moore has called our attention to the fact that in four other sections of the same Act in which offences are created and penalties imposed the words "upon summary conviction" are employed. The 91st section only uses the words "upon conviction," and persons guilty of any offences which are embraced within its provisions are liable to a penalty of two pounds, and disfranchisement follows upon such conviction for a term of six years. The question might be an arguable one if it rested there; but the 92nd section says that "any penalty and any money which under this Act is recoverable summarily, and all proceedings under this Act which may be taken in a summary manner, may be recovered and taken before two Justices," &c. Therefore the 92nd section, following as it does immediately after the 91st section, and also the other sections to which our attention has been called, affords a strong reason for supposing that these sections were all intended to be placed, as regards procedure, upon the same footing. The words are certainly not very clear, but I come to the conclusion that the 91st section was intended to be governed by the same rules as the other sections, and that the words "upon conviction" mean "upon summary conviction."

MANISTY, J.—I am of the same opinion.

Rule discharged.

Solicitor—A. T. Cox, agent for B. B. Dyer, Boston, for applicant.

[IN THE QUEEN'S BENCH DIVISION.]

1880. { CLARK (*appellant*) v. THE
Nov. 20, 27. { ASSESSMENT COMMITTEE OF
THE ALDEBURY UNION AND
OTHERS (*respondents*).

Poor-Rate—Refreshment Contractor—Quarter Sessions—Appeal against Assessment—Admissibility of Evidence—Annual Value less than Rent—Case stated by Sessions—Costs—Removal of Order without Certiorari—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 40—Rules of Court, 1880—Order LXII.

The appellant was the occupier of certain refreshment-rooms at the S. station at a fixed annual rent, and was rated as such occupier by the respondents. Upon appeal to the sessions against a poor-rate the appellant tendered evidence as to sums received and paid for provisions, salaries, &c. in connection with the premises so rated, with a view of shewing that the business was carried on at a loss, and that the rent agreed upon exceeded the annual value of the premises:—Held, that such evidence was admissible.

The Court has power to grant costs to a successful party in a case stated by sessions upon appeal against a poor-rate, the proceedings being civil proceedings within Order LXII. of the Rules of Court, 1880.

This was a case on appeal to the Salisbury quarter sessions against a poor-rate. The following are the material facts:—

The appellant is a refreshment contractor and is the lessee of the refreshment-rooms at the Salisbury station of the London and South Western Railway Company under an agreement dated the 6th of February, 1879. The respondents are the assessment committee of the Alderbury Union, in the county of Wilts, and the churchwardens and overseers of the poor of the parish of Fisherton Angar, in the said county.

By the said agreement of the 6th of February, 1879, the appellant undertook to pay to the company a rent of 1,000*l.* a-year, with a certain percentage if the gross receipts exceeded a certain sum.

A rate was made in July, 1879, according to a supplemental valuation list of the 28th of March, 1879, in which the

appellant's property was estimated at 1,000*l.* gross rental, and 900*l.* rateable value.

The appellant appealed against the rate, and upon the hearing of the appeal it was proved that the appellant was lessee of all the principal refreshment-rooms of the London and South Western Railway Company; that previously to 1878 there was only one refreshment-room at the Salisbury station, which was rented at the rate of 400*l.* per annum; that in 1878 the company increased their station and erected another refreshment-room; that both refreshment-rooms were put up to be let by public tender, and that the appellant's tender was accepted at the rent stated above.

The appellant contended that he had made a mistake, and that he had offered more rent in the expectation that the number of passengers and trains would be increased, which had not been the case; and that consequently he had incurred considerable loss.

He then tendered evidence of two kinds: first, the evidence of an accountant to show the account of his total receipts and expenditure with respect to the refreshment-rooms in question, for provisions, salaries and rates, and all other expenses during 1879, which shewed that the appellant had lost in the thirteen months ending the 30th of June, 1879, 457*l.* 17*s.* 5*d.*, and in the twelve months ending the 31st of December, 1879, 796*l.* 18*s.* 8*d.*; secondly, the evidence of a surveyor and valuer to prove, taking those figures as the basis of his calculations, what amount of rent the tenant could actually have afforded to pay his landlord for the year 1879, after allowing the tenant a trade-profit of ten per cent. as his capital, the usual deductions for wear and tear and interest on capital, &c.

The respondents objected to this evidence on the grounds—first, that the appellant, after assessing the value of the premises by offering and paying a particular rent, could not be heard to say that the annual value was less than such rent; secondly, that, at any rate, the price actually paid for provisions and salaries could not be evidence for the respondents.

Clark v. Assessment Committee of Alderbury Union, Q.B.

The Recorder overruled the respondents' objections, and admitted the evidence, and amended the rate by reducing it.

The questions for the opinion of the Court were—first, whether the evidence was admissible to shew what was the yearly value of the premises; secondly, whether evidence was admissible of the cost to the appellant of the provisions supplied to the refreshment-rooms, and of the expenses of management of the same.

Meadows White (Bullen with him), for the appellant.—The evidence was tendered with a view of shewing that no tenant could make the rent out of the profits of the undertaking. Rent is no doubt *prima facie* evidence of value, but it is not conclusive.

They were stopped by the Court.

Wills and *Prior Goldney*, for the respondents.—The evidence tendered was wrongly received by the sessions. It is admitted that the rent is not conclusive on the question of value. But, as a general rule, evidence of the profits made by a particular individual is not admissible.

In *The Queen v. Verrall* (1) it was no doubt held that in ascertaining the rateable value of land used as a racecourse evidence may be given of the amount of profits made from the land so used. But that case is distinguishable, because the value of an exceptional undertaking, such as a racecourse, could not be ascertained by any other means; and if not distinguishable, the decision conflicts with that in *The Queen v. North Aylesford Union* (2), where it was held that evidence of profits made by a particular individual was not admissible. They also cited *The Queen v. Wells* (3).

FIELD, J.—The case is, in my judgment, free from doubt. The appellant is the occupier of a rateable hereditament, and the question raised by the appeal is, whether he was properly assessed on the

annual value of the premises. The facts of the case are shortly these: Mr. Clark is a refreshment contractor on the London and South Western Railway, and acted in that capacity at the Salisbury station. In 1878 a second refreshment-room was added at that station, of which the appellant obtained the lease by open tender. The rent which he agreed to pay was, as it turned out, considerably larger than he could afford to pay. At the hearing of the appeal evidence was tendered of the loss which had been sustained by shewing the receipts and expenditure for provisions, salaries and other expenses, and also to prove what was really the amount which a tenant could afford to pay his landlord for these premises, after making the usual allowances and deductions. This evidence was objected to by the respondents on the grounds—first, that the appellant having offered a particular rent for these premises, was estopped from saying that the annual value was less than the rent offered; and, secondly, that the price annually paid for provisions, &c., could not be evidence against the respondents. The sessions overruled the respondents' objection, and admitted the evidence, and we have now to decide whether the ruling of the sessions was correct.

Now, I am of opinion that the decision of the sessions was perfectly right. Mr. Wills admitted that the actual rent was not the criterion on which the question before us must be determined. The only question, therefore, for us is, whether certain evidence was admissible. The appellant proposed to shew that by reason of the price of provisions, &c., it was impossible to carry on business at a profit. It was put thus: "I'll shew you what I have to pay. I buy as cheap and sell as dear as I can, but I cannot afford a higher rent than 400*l*." Now is evidence of this kind inadmissible? In *The Queen v. Verrall* (1) the very point was raised, and evidence of the profits derived from the use of certain land as a racecourse was held admissible, not as an absolute test, but as a material element in determining the value of such land. That was the converse of the present case, but the same principle applies. It

(1) 45 Law J. Rep. M.C. 29; Law Rep. 1 Q.B. D. 9.

(2) 26 Law Times, N.S. 618; 37 J.P. 148.

(3) 36 Law J. Rep. M.C. 109; Law Rep. 2 Q.B. 542.

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seems to me that *The Queen v. Verrall* (1) in no way conflicts with the decision in *The Queen v. The Guardians of North Aylesford* (2), where all that was held was that evidence of a particular mode of carrying on business was inadmissible to shew the value of the premises. On those grounds I think our judgment must be in favour of the appellant.

BOWEN, J., concurred.

Judgment for appellant.

On a subsequent day (Nov. 27) *Meadows White* on behalf of the appellant applied for costs. By the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 40, a writ of *certiorari* is no longer required for the removal to this Court of an order in relation to which a Special Case is stated by the sessions (4). There is no machinery provided at present as to what is to be done in these cases.

[FIELD, J.—The proper course is for the appellant to apply to the clerk of the peace to get the order transmitted to the Crown Office.]

Under the old practice, the recognisances required to be entered into before the writ of *certiorari* issued provided for the costs. The present application for costs is made under the Rules of Court, 1880, Order LXII. rule 55, by which the Rules of the Supreme Court as to costs (see Order LV.) are made applicable to all civil proceedings on the Crown side of the Queen's Bench Division. Rule 59 of the same Order (LXII.) no doubt says that "for the purpose of this order proceedings in *mandamus quo warranto* and prohibition shall be deemed civil proceedings;" but the framer of the rule did not thereby intend to exclude all other civil proceedings on the Crown side. The fact is, there was something of a *quasi*-criminal nature in the three proceedings mentioned in rule 59, and but for that rule it is doubtful whether

(4) By 42 & 43 Vict. c. 49. s. 40, "a writ of *certiorari* or other writ shall not be required for the removal of any conviction order or other determination in relation to which a Special Case is stated by a Court of general or quarter sessions for obtaining the judgment or determination of a superior Court."

they could have been classed as "civil proceedings." Under Order LV. of the Rules of Court, 1875, the costs incident to proceedings in the High Court are in the discretion of the Court, and under that order the present application is made.

A. Wills, for the respondents, admitted that he could not successfully resist the application.

THE COURT (5).—Order LXII. rule 59 of April, 1880, was not intended to be confined to the three proceedings therein mentioned, but was framed *ex abundanti cautela*. The general policy of the order is that costs should be in the discretion of the Court.

Costs granted (6).

Solicitors—Davis, Morgan & Co., for appellant; Taylor, Hoare & Taylor, agents for Wilson, Thring & Wilson, Salisbury, for respondents.

[IN THE COURT OF APPEAL.]

(Appeal from the Queen's Bench Division.)

1880.

Dec. 8, 9.

1881.

Jan. 14.

THE QUEEN v. HUTCHINS.*

Estoppel—Res Judicata—Public Health—Highway Repairable by Inhabitants at large—Whether Decision of Justices as to Character of Street conclusive—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150—11 & 12 Vict. c. 43.

An urban authority, acting under the Public Health Act, gave notice to the defendant, as owner of premises abutting on

(5) Field, J., and Manisty, J.

(6) Upon the same day a similar application was made to the Court in *The Queen v. Baxendale*, in which this Court had dismissed, upon a case stated, the appeal of a defendant against a summary conviction by Justices under the Weights and Measures Act, 1878.

The Court (Field, J., and Manisty, J.) declined the application on the ground that the proceedings were criminal proceedings on the Crown side of the Queen's Bench, and did not come within Order LXII.

* *Coram* Lord Selborne, L.C.; Baggallay, L.J.; and Brett, L.J.

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a street, to sewer and channel part of the street, and, on his failing to comply with the notice, they did the work themselves, and summoned the defendant before Justices to obtain payment from him of the expenses incurred thereby. At the hearing the Justices dismissed the complaint on the ground that the street was a highway repairable by the inhabitants at large. Three years afterwards the urban authority gave notice to the defendant to level and pave the same part of the street, and, on his failing to comply with that notice, did the work themselves, and again summoned the defendant before Justices to obtain payment of the expenses incurred by them:—Held (reversing the judgment of the Exchequer Division), that the order made by the Justices on the first summons was not conclusive between the parties (in respect to the proceedings under the second summons) as to whether the street was a highway repairable by the inhabitants at large; and, therefore, that the urban authority were not estopped from recovering the expenses claimed under the second summons.

Appeal from a judgment of the Queen's Bench Division, on a case stated under section 269 of the Public Health Act, 1875.

The case below is fully reported, and the facts set out, 49 Law J. Rep. M.C. 64.

The argument in the Court of Appeal, and the authorities relied on, sufficiently appear from the judgment (*post*).

Hopwood appeared for the prosecutors.

Ambrose and *F. O. Crump*, for the defendant.

Cur. adv. vult.

LORD SELBORNE, L.C. (on Jan. 14), delivered the judgment of the Court as follows:—

The question in this appeal arises upon a Special Case, stated by the quarter sessions of Salford under section 269 of the Public Health Act of 1875, for the opinion of the High Court. Subject to the opinion of the High Court on that Special Case, the Court of quarter sessions confirmed an order made on the 14th of November, 1879, by Sir John

Mantell, a stipendiary magistrate, having the same authority with Justices in petty sessions, for the payment of the sum of 442l. 0s. 5d. by the defendant Hutchins to the urban authority for the district of Bradford, in Lancashire. The Court below has quashed that order. There was a preliminary objection taken to our jurisdiction to entertain the appeal; but, as it appeared that leave would have been given to appeal if a recent decision of the House of Lords had not been supposed to make it unnecessary, the objection was waived, upon an agreement between the parties that this appeal should be dealt with as if such leave (supposing it to be necessary) had been given.

By section 149 of the Public Health Act of 1875 (38 & 39 Vict. c. 55), the urban authority of Bradford was charged with the duty of (among other things) levelling, paving, flagging, and channelling all streets within the district which were or should become highways repairable by the inhabitants at large. By the next section (section 150) the duty of executing, or defraying the cost of similar works, was imposed upon the owners or occupiers of adjoining lands, as to every street within the district which was not such a highway. The liability so imposed by section 150 was to be thus enforced: First, the urban authority was to give a notice to the owners or occupiers of the adjoining lands, requiring the works (which were to be specified in certain plans, sections and estimates, open for inspection at the office of the urban authority) to be executed within a limited time; secondly, if the notice were not complied with, the urban authority might itself execute such works; and, thirdly, having done so, it might recover, in a summary way, the expenses incurred in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as should be settled by the surveyor of the urban authority or (in case of dispute) by arbitration.

The cases of *Whitchurch v. The Fulham Board of Works* (1) and *The Vestry of*

(1) 35 Law J. Rep. M.C. 145; Law Rep. 1 Q.B. 233.

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Mile End Old Town v. The Whitechapel Union (2) shew that every member of a class of persons liable, under provisions like these, to contribute to such expenses, has an interest in their due and proper distribution and apportionment, so that a just *quota* may be borne by each of them.

Under sections 251 and 257 of the Act such expenses are recoverable before a Court of summary jurisdiction consisting of two or more Justices in petty sessions, or of a single magistrate empowered for that purpose by law, in the manner provided by 11 & 12 Vict. c. 43.

The question which the Court below has decided in favour of the defendant was, whether, by reason of a former decision of Justices in petty sessions, dated the 7th of May, 1874, the Crown, or the urban authority of Bradford, was estopped from claiming payment of the sum demanded by them in November, 1879, as a *quota* of expenses due from the defendant under section 150 of the Public Health Act, 1875. Besides the question of substance, there were some other questions of form, all which I assume (for the purpose of the present decision) in the defendant's favour. Mr. Justice Lush held that the defendant was entitled to the benefit of the estoppel claimed by him. Mr. Justice Field preferred to say that the former decision of the 7th of May, 1874, was conclusive evidence in his favour. But I consider both those learned Judges to have held, in effect, the same thing; the difference in their language being explained by such authorities as *The Queen v. The Inhabitants of Haughton* (3) and the cases commented upon by Mr. Smith at pp. 799, 800 of 2 *Smith's Leading Cas.* 7th ed.

The Justices in petty sessions on the 7th of May, 1874, dismissed a summons taken out by the same urban authority against the same defendant for the *quota* apportioned to him, under section 150, of certain expenses incurred in sewerage and channelling a street called Mill Street, adjoining land belonging to him as owner; and the Special Case states, as

the ground on which they dismissed that summons, that they then adjudicated and found that the said street was a highway repairable by the inhabitants at large. Afterwards, in another similar proceeding against one Cunliffe, another adjoining owner, upon evidence which was not before them on the 7th of May, 1874, the same or other Justices in petty sessions came to an opposite conclusion, and ordered payment by Cunliffe of the amount then claimed against him; considering that Mill Street was not such a highway. The dismissal of the former summons against the present defendant, and the ground of it, were given in evidence on that occasion. When the summons of 1879 against the present defendant for his share of the expenses of new and different works (levelling, paving and flagging) in the same street, was heard by the stipendiary magistrate, it was agreed that all the evidence in Cunliffe's case should be treated as then before him; and upon that evidence he found the defendants liable, holding, either that there was no estoppel in the defendants' favour by the proceeding of 1874, or that (if there was) it was set at large by the subsequent decision in Cunliffe's case.

I am of opinion that there was in law no estoppel; that Sir John Mantell's order was right in substance; and that the present appeal from the order made in the Queen's Bench Division ought to be allowed. I think so because of the nature of the liability in question, and the nature and limits of the summary jurisdiction which the Justices exercised on the 7th of May, 1874.

We have in this case nothing at all to do with any judgment *in rem*. If we had, there might be ground for holding that there were two cross and contradictory estoppels—one by the judgment for the present defendant in 1874, and the other by the contrary judgment against Cunliffe—the effect of which might have been to set the whole matter at large. But here there is no proceeding *in rem*, no question of *status*, and if the case which was quoted to us of *The Queen v. The Inhabitants of Hartington* (4) was cor-

(2) 45 Law J. Rep. M.C. 75; 46 *ibid.* 138.

(3) 1 R. & B. 501; 22 Law J. Rep. M.C. 89.

(4) 4 E. & B. 780; 24 Law J. Rep. M.C. 98.

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rectly decided (as to which I feel considerable doubt) it is not relevant.

The principles of the law of estoppel by a judgment *inter partes*, to which alone I think it necessary to refer, may be taken from Chief Justice De Grey's opinion in *The Duchess of Kingston's Case* (5), and from that of Vice-Chancellor Knight-Bruce in *Barrs v. Jackson* (6). The decision in the latter case was reversed, but on grounds not at all touching the statement of principles contained in it. "The judgment" (said Chief Justice De Grey) "of a Court of concurrent (or of exclusive) jurisdiction, directly upon the point, is conclusive upon the same matter between the same parties coming incidentally in question in another Court for a different purpose. But neither the judgment of a concurrent or exclusive jurisdiction is evidence" (that is, as I understand the meaning of the Chief Justice, conclusive evidence) "of any matter which came collaterally in question, though within their jurisdiction, nor of any matter incidentally cognisable, nor of any matter to be inferred by argument from the judgment." Vice-Chancellor Knight-Bruce said, "It is, I think, to be collected that the rule against re-agitating matter adjudicated is subject generally to this restriction, that, however essential the establishment of particular facts may be to the soundness of judicial decision; however it may proceed upon them as established; and however binding and conclusive the decision may be as to its direct and immediate object, these facts are not all necessarily established conclusively between the parties, and that either may again litigate them for any other purpose as to which they may come in question, provided the immediate subject of the decision is not attempted to be withdrawn from its operation, so as to defeat its direct object."

To these may be added the principle on which the limitation of estoppel *per rem judicatam* to parties and privies depends, that *res inter alios acta alteri nocere non potest*.

We are not in this case called upon to determine how far, or under what conditions an order of a Court of summary jurisdiction may operate between the parties to it as an estoppel. Assuming that it may do so to some extent and under some conditions, I conceive it to be clear that it cannot so operate, first, as to any matter as to which that Court had no authority to adjudicate directly and immediately between the parties; secondly, as to any matter incidentally coming in question, as to which a finding, if held to be conclusive between the parties, would operate in prejudice of the rights of others not parties to the proceeding; or, thirdly, as to any incidental matter, not otherwise determined than as having been the particular ground on which the Court dismissed a charge or complaint.

The Justices before whom the complaint of the urban authority came, on the 7th of May, 1874, had no jurisdiction to adjudicate directly or immediately between these parties (or between any parties whatever) on the question whether Mill Street was, or was not, a highway repairable by the inhabitants of Bradford at large. That was, at the most, a matter "incidentally cognisable" by them. No conclusion which they might form upon it could establish (in the one case) or disprove (in the other) any such liability as against or in favour of the inhabitants. Their only jurisdiction was to make or refuse the order for payment of a certain sum of money then claimed as the defendant's statutable *quota* of certain expenses at that time incurred by the urban authority.

To hold the Crown or the urban authority estopped for ever from claiming payment of the defendant's *quota* of any other expenses of a like character afterwards incurred in respect of the same street, because on the 7th of May, 1874, the Justices of the petty sessions held the street to be a highway, repairable by the inhabitants at large, would (if it were not really such a highway) be to deprive the other adjoining landowners who were not parties or privies to the proceeding of their statutable right to have a just rateable contribution from the defendant and

(5) 2 Sm. L.C. 761 (7th ed.).

(6) *Ibid.* 807.

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his successors in estate to all future expenses apportionable among all the adjoining landowners under section 150 of the Public Health Act. And if the decision under appeal is correct it would follow (perhaps *a fortiori*) that Mr. Cunliffe and all persons claiming under him are also estopped from asserting that Mill Street is a highway repairable by the inhabitants at large. There would, therefore, be, within the same district, two laws operating simultaneously in opposite directions, as against different persons in exactly the same circumstances, under the same words of taxation in the same public Act of Parliament, and either imposing upon some of those individuals, and their privies in estate, a liability which the statute had not in fact imposed, or exonerating others and their privies in estate (to the prejudice of the rest) from their share of a common burden, which the statute had imposed equally upon all.

Furthermore, the order of dismissal cannot, in my opinion, have any greater force or effect by way of estoppel than if it had been actually drawn up in the proper form prescribed by 11 & 12 Vict. c. 43. s. 14, sched. form L—in which case it would only have found that the complaint of the urban authority was “not proved.” Such an order, being at the most equivalent in this *quasi*-criminal proceeding to an acquittal, could not have operated as an estoppel, except against a repetition of the same demand for the same *quota* of the same expenses—see *Buller's Nisi Prius*, p. 245; 1 *Gilbert on Evidence* (Loft's ed.) p. 34; *The King v. The Inhabitants of Burbon* (?).

I think, therefore, that this appeal must be allowed.

Judgment reversed.

Solicitors—Gregory & Co., agents for A. and G. W. Fox, Manchester, for prosecutors; Norris, Allens & Co., agents for Diggle & Ogden, Manchester, for defendant.

[IN THE QUEEN'S BENCH DIVISION.]

1880. { EYTON (*appellant*) v. THE OVER-
Nov. 13. { SEERS ETC. OF MOLD (*re-*
 spondents).

The Rating Act, 1874 (37 & 38 Vict. c. 54), s. 4, sub-s. (a)—*Valuation of Land used as a Plantation—Assessment of Sporting Rights.*

By the Rating Act, 1874 (37 & 38 Vict. c. 54) s. 4, sub-s. (a), *the rateable value of any land used only for a plantation or wood is to be estimated “as if the land, instead of being a plantation or a wood, were let and occupied in its natural and unimproved state:”—Held, that the enhanced value of such land, owing to the presence of game upon it, was properly taken into account in assessing its rateable value.*

CASE stated under 12 & 13 Vict. c. 45. s. 11.

1. The appellant was the owner and occupier of certain woodlands situate at Mold, used by him as a plantation or wood, and not for the growth of saleable underwood.

2. The respondents are the churchwardens and overseers of the poor for the parish of Mold, the guardians of the poor of the Holywell Union, in the county of Flint, and the assessment committee of the said union.

3. By a poor-rate made on the 29th of November, 1879, the said woodlands were assessed to the appellant.

4. The appellant has the enjoyment of and has exercised the right of sporting over the said woodlands, and the respective amounts inserted under the heads of “gross estimated rental” and “rateable value” include in each case a fixed sum of 2s. per acre, which is added to the natural and unimproved value of the said woodland in respect of such right of sporting.

5. The question for the decision of the Court was, whether the said sums in respect of such right of sporting were rightly included in the assessment, or whether the assessment ought to be reduced by striking out the same (1).

(1) By the Rating Act, 1874 (37 & 38 Vict. c. 54), s. 4, “The gross and rateable value of any

Eyton v. Overseers &c. of Mold, Q.B.

Marshall (with him *Banks*), for the appellant.—The rateable value of the land in question is to be estimated as land in its natural and unimproved state; that is to say, as waste land, and without game. The word “only” is used in sub-section (a) to distinguish it from the other sub-sections, and in no way refers to the absence of any right of shooting.

Darling (with him *A. F. Roberts*), for the respondents.—The contention on the other side will involve this absurdity, namely, that if there be game upon the land which is not wood, the land and right of shooting can be taken into consideration; but if the game is upon land used as a wood, the right of sporting is not rateable.

They were stopped by the Court.

FIELD, J.—I am clearly of opinion that the Justices have acted in accordance with the statutes which lay down the principle upon which all land is to be rated, namely, at the sum which, if let by the year, a tenant could give for it. This is land, and land in its natural state, in this sense, that all that has been done is that there are certain trees growing upon it which have been either planted or have grown up of themselves.

Now before the Rating Act of 1874 was passed the law was well settled that if the occupier of land had not reserved the right of taking game, he was rateable on the basis of what the land, independently of such right, would let for. But if the mere right of taking game was reserved, such a right, being an incorporeal hereditament, could not be rated in the hands of licensees. That being the state of the law, it is clear that prior to the Act of 1874 lands used as underwoods, but not the subject of sale, could not be rated, because the statute of Elizabeth used the term “saleable underwoods” without mention of any other woods, and it was thence inferred that

land used for a plantation or a wood, or for the growth of saleable underwood, shall be estimated as follows: (a) If the land is used only for a plantation or a wood, the value shall be estimated as if the land, instead of being a plantation or a wood, were let and occupied in its natural and unimproved state.”

none but underwood was rateable. But the Legislature in 1874 were of opinion that land used for plantation and woods ought not to escape being rated, and accordingly enacted that the value of land so used should be estimated as if the land, instead of being a plantation or a wood, were let and occupied in its natural and unimproved state. The result of this is to place an occupier in the same position as the tenant in *The Queen v. Williams* (2), where it was held that a rate for land was properly increased by the value of the right which the tenant had acquired of shooting game over it.

But Mr. Marshall has contended that though this assessment may be made if the right is severed, it does not apply where such right is reserved to the owner. Such a construction of the statute seems to me highly unreasonable, and not within the words of the section.

The value of land in its natural and unimproved state may be enhanced by the presence of game upon it, and this more especially in the case of woodlands. It seems to me, therefore, that the rating authorities were quite right in the assessment they have made upon the appellant's property.

MANISTY, J.—I am of the same opinion, and think that this is a very clear case. The 4th section makes plantations or woods rateable in different ways. The question is, What is the meaning of the words “natural and unimproved state”? The meaning of the section really is, that you are not to attach any value to the woods or plantations standing upon the land. But if the land has itself an enhanced value owing to the presence of game upon it, its enhanced value may then be taken into account for assessment purposes.

Judgment for respondents.

Solicitors—Simpson, Hammond & Co., agents for Kelly & Keene, Mold, for both parties.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { *Ex parte* WHITCHURCH; *in re*
March 5. { AN ORDER MADE BY JUSTICES
OF NOTTINGHAM.

Nuisance—Abatement—Public Health Act, 1875, ss. 94 and 96—“Works necessary for” abating Nuisance.

An urban sanitary authority, under the Public Health Act, 1875, s. 94, served upon the owner of a house, to which were attached a privy and an ashpit in such a state as to be a nuisance, a notice requiring him to abate the nuisance, and for that purpose to fill up the ashpit, abandon the privy and construct a pail closet. The notice not having been complied with, an order was made in similar terms by two Justices acting under section 96 of the Act. Upon application to quash the order on the ground that the Act gave no power to prescribe in order to the abatement of the nuisance the substitution of a particular kind of closet,—Held, that the order must be quashed accordingly.

This was an order obtained on behalf of Charles James Whitchurch, calling upon two Justices of the borough of Nottingham to shew cause why a writ of *certiorari* should not issue to bring up and quash an order made by them against him under the Public Health Act, 1875, on the 20th of August, 1880.

The material facts appearing were as follows:—

The applicant was the owner within the meaning of the Public Health Act, 1875, of a house, in the borough of Nottingham, in the back yard of which were a privy and an ashpit. The privy and ashpit being in an offensive state and a nuisance, the Town Council, as the urban sanitary authority, served upon the applicant, on the 4th of July, 1880, a notice, under the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 94, requiring him within seven days to abate the nuisance, “and for that purpose to fill up the said ashpit, abandon the privy and build a pail closet.” Such notice not having been complied with, the applicant was, upon complaint by the Town Council, served with a summons under section 95 of the Act to appear at petty sessions;

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and upon the return of such summons on the 20th of August, 1880, an order under section 96 of the Act was made requiring the applicant, within one month from service thereof, “to fill up the said ashpit, to abandon the said privy and to construct a proper and sufficient pail closet in lieu thereof.” This was the order which the applicant sought to quash.

The ground of the application was that to prescribe the mode of abating the nuisance went beyond the powers given by the Act.

Philbrick, for the Justices.—To prescribe the mode of abating the nuisance was within the powers given by the Act. That results from the enactments in the body of the Act (section 91 and following sections), and appears still more clearly upon reference to the schedule of forms, to which, with the other schedules, effect is given by section 317—see especially form C. Convenience requires that there should be such a power; and the right of appeal given by section 269 is a sufficient safeguard against a wrong exercise of the power. Under the Public Health Act of 1848 (11 & 12 Vict. c. 63) the local board of health had power to prescribe the nature and extent of works to be executed—*Hargreaves v. Taylor* (1).

French (*Graham* with him), for the applicant.—The Act only authorises a notice and order to execute such works as are “necessary” for abating the nuisance. There is no inconvenience in giving to the Act its natural meaning, and there would be much inconvenience in the contrary construction. The prescribing of the doing away with a privy is only within the powers of the Act when the privy is where it must necessarily be a nuisance.

He was stopped by the Court.

POLLOCK, B.—The enactments of the Public Health Act, 1875, which we are called upon to construe do not, in my opinion, give power to require the making of a particular kind of closet. There is, we know, much discussion among practical people concerned with such matters as to

(1) 3 B. & S. 613; 32 Law J. Rep. M.C. 111.

Ex parte Whitchurch; in re An Order made by Justices of Nottingham, Q.B.

the comparative merits of different kinds. The applicant is, I think, entitled to have the order brought up by *certiorari* and quashed.

STEPHEN, J.—I am of the same opinion. The question seems to me to turn upon the word "necessary." That cannot, I think, be read as extending to whatever the local sanitary authority thinks necessary.

Order absolute to bring up and quash the order.

Solicitors—Taylor, Hoare & Taylor, agents for Hunt & Williams, Nottingham, for applicant; Hughes, Hooker & Co., agents for S. G. Johnson, Nottingham, for the Justices.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { THE GUARDIANS OF THE FUL-
Feb. 23. { HAM UNION (*appellants*) v.
 { THE GUARDIANS OF THE ISLE
 { OF THANET UNION (*respondents*).

Poor — Settlement — Irremovability — 9 & 10 Vict. c. 66. s. 1—39 & 40 Vict. c. 61. s. 34—Penitentiary supported by Subscriptions—"Bona fide charitable gift."

The maintenance of a pauper in a "home" supported by offertories from the churches in the diocese and by subscriptions from persons in various parts of the country, is a maintenance by a bona fide charitable gift; and the period of residence in such "home" cannot be excluded from the computation of time when it is desired to ascertain whether the pauper has acquired a status of irremovability within 9 & 10 Vict. c. 66 and 39 & 40 Vict. c. 61.

CASE stated on appeal against an order for the removal of a pauper who had been resident for upwards of three years in a parish within the appellant union.

The pauper had in fact been during that period an inmate of a penitentiary or home, called the "St. John's Female Home," such home being supported by offertories from the churches in Middlesex,

and by subscriptions from various persons in different parts of the country.

The question was, whether, under the above circumstances, the pauper's residence in the home was such a residence as to render her irremovable, and, consequently, to give her a settlement in Fulham within the meaning of 9 & 10 Vict. c. 66 (1) and 39 & 40 Vict. c. 61 (2).

A. Charles (Poland with him), for the appellants.—The question is one of the construction of the 9 & 10 Vict. c. 66. s. 1 (1). Does the pauper inmate of this home for three years come within the proviso? The words "subscription raised in a parish in which such person does not reside" mean exactly this sort of case. The benevolence of other persons in other parishes is not to impose a burden on this parish. Then, as to the words "charitable gift," they must mean something different from "subscription," otherwise no meaning is given to the latter word. It is contended, therefore, that "subscription" is directed to cases where an institution is subscribed to, and "gift" to those where there is a donation

(1) By 9 & 10 Vict. c. 66. s. 1, it is enacted that from and after the passing of that Act "no person shall be removed nor shall any warrant be granted for the removal of any person from any parish in which such person shall have resided for five years [now one year by 28 & 29 Vict. c. 79. s. 8] next before the application for the warrant; provided always that the time during which such person shall be a prisoner in a prison, or shall be serving her Majesty as a soldier, marine or sailor, or reside as an in-pensioner in Greenwich or Chelsea hospitals, or shall be confined in a lunatic asylum or house duly licensed, or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a bona fide charitable gift, shall for all purposes be excluded from the computation of time hereinbefore mentioned."

(2) By 39 & 40 Vict. c. 61. s. 34, it is enacted: "Where any person shall have resided for the term of three years in any parish in such manner and under such circumstances in each of such years as would in accordance with the several statutes in that behalf render him irremovable, he shall be deemed to be settled therein until he shall acquire a settlement in some other parish by a like residence or otherwise," &c.

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directly to the object of charity, from donor to donee. Settlements will be gained in all orphanages if any other construction be adopted.

Prosser, contra.—The words of the section are quite plain; and this case is not included in those specified. The residence for three years has been in accordance with the Act, and the pauper has been partly maintained by subscriptions which were *bona fide* charitable gifts. The word "subscription" was probably put in *ex majori cautela* to cover cases which "rate" might not meet.

Charles, in reply.

FIELD, J.—We are of opinion that the order was rightly made upon the Fulham Union. In point of fact it is quite clear that the pauper has resided the time which by the statute is requisite to make her irremovable in Fulham, and she has had no residence elsewhere. We are therefore spared all questions as to constructive residence, and have only to see whether her case comes within the proviso to the Act 9 & 10 Vict. c. 66. s. 1. Now the object of the Legislature in passing the Acts making paupers irremovable was, first, in the interest of the paupers to prevent disruption of homes and separation of families and persons being taken away from their place of birth; secondly, in the public interest to diminish the expense of orders of removal, and to do away with those minute questions about derivative settlements which used to be continually arising.

But when the Legislature decided to confer a *status* of irremovability on the paupers, they intended to protect the parish in respect of temporary residences, or such as might be brought about collusively or corruptly with the view of shifting burdens on to ratepayers who ought not to bear them. They also provided that compulsory residences, such as in a prison or asylum, should not make a man irremovable. The question then here is, whether the residence of this pauper in Fulham came legally into existence as a residence within the early part of the section while she was in this home—whether she was in part maintained by any rate or subscription raised in a parish

in which she did not reside, not being a *bona fide* charitable gift.

When we look at the cases to which the proviso does in terms apply—the Greenwich pensioners, patients in a hospital, lunatics and prisoners—I cannot help feeling that if the Legislature had foreseen this case they might have included it. At the same time Fulham does receive something in the rateability of this home, and from the persons who come in consequence into the parish and contribute to the burdens. As, however, we cannot speculate on what might have been, I am bound to say that I think that on the plain language of the proviso this case does not fall within it.

I agree with Mr. Charles that the pauper has been maintained in part by subscriptions raised in a parish where she does not reside; but then, if such subscription is a *bona fide* charitable gift, the former words do not apply to relieve the Fulham Union. It must be admitted that these subscriptions are charitable, and they are given *bona fide*. Can it then be said not to be a gift because the donation does not go direct from the giver to the object of the charity? I think not. It is true the subscribers do not give their money to a named individual, but they entrust it to an official to expend it in the best way upon the individuals. I think, therefore, it is a charitable gift, and the proviso does not apply.

MANISTY, J.—I have come to the same conclusion. I do not rest my judgment on what may have been the general intention of the Legislature when the Act was under consideration, but upon what the Act has said. At the same time I do think that the purpose of the legislation on the subject was to prevent parish A from being saddled with the payment for a pauper really belonging to parish B; and I do not quite agree with my brother Field as to the meaning which he has given to the words "a parish" as equivalent to "any parishes." I think what was intended to be expressed was that parish B should not be able to evade its liability by means of any rate or subscription raised in such parish to maintain or partly maintain a pauper then residing in parish

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A; for it was a practice like this which had been adopted, and which it was wished to prevent. On the words of the section I am of opinion that the maintenance of this pauper in the appellant union was by means of "a bona fide charitable gift," and that the Justices were right.

Order affirmed.

Solicitors—Rexworthy, Oswell & Co., for appellants; Paterson, Snow & Bloxam, agents for O. and A. Daniel, Ramsgate, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { GOULD AND OTHERS (appellants) v. THE BACUP LOCAL
Feb. 19. { BOARD (respondents).

Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150—Sewering of Street—Recovery of Expenses incurred by Local Board—Notice not in accordance with Statute—Private Improvement Expenses—Summary Procedure before Justices.

The 150th section of the Public Health Act, 1875, permits an urban authority in certain cases to give notice to the owners of premises fronting, adjoining or abutting parts of such street which in the judgment of such urban authority required to be sewered, requiring them to do what is necessary within a time to be specified in the notice, and, in the event of non-compliance with the notice, to execute the works themselves; and the same section also provides that such urban authority "may recover in a summary manner the expenses incurred by them in so doing from the owners in default, . . . or may by order declare the expenses so incurred to be private improvement expenses."

By section 213, et seq., a private improvement rate may be levied for expenses declared to be private improvement expenses, and certain advantages are given to owners.

A notice given to the appellants, who were owners of premises fronting a street within the meaning of the 150th section, requiring

them to do certain sewerage works within a prescribed period, and stating that if such works were not executed the urban authority would execute the same themselves at the appellants' expense, thus concluded: "And the said urban authority will thereupon also proceed to declare all costs, charges and expenses paid, expended or incurred by them in consequence of such neglect or default, to be private improvement expenses, and to enforce payment according to law":—

Held, that even assuming the notice to have been good, the concluding portion could not be treated as surplusage, and that it was not, therefore, competent for the urban authority, after their declared intention to treat the expenses incurred as private improvement expenses, to proceed against the appellants summarily for the recovery of such expenses.

CASE stated by Justices under 20 & 21 Vict. c. 43.

The appellants were summoned upon a complaint made by the Local Board for the district of Bacup, in the county of Lancaster, for that they, being owners of certain property situate in Underbank Street, within the district of the board, neglected and refused to pay upon demand to the said board the sum of 113*l.* 16*s.* 8*d.*, being the amount awarded and apportioned by a certain award of an arbitrator and for expenses incurred by the said board in the doing of certain works in or near the said street, and also 61*l.* 4*s.* 9*d.*, the costs of the arbitration.

The summons was heard on the 7th of January, 1880, when it was proved that on the 17th of March, 1875, a notice purporting to be given under the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 69, was duly served on Thomas Hammerton, the owner of property fronting to, adjoining or abutting upon the said street called Underbank.

The following is a copy of the said notice so far as it is material:—

"Local Board for the district of Bacup, in the county of Lancaster.

"To Mr. Thomas Edward Hammerton, of Todmorden, the owner of certain premises fronting, adjoining or abutting

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upon a certain street called Underbank, in the township of Newchurch, within the said district.

"Whereas the said street is not sewered and made good to the satisfaction of the above-mentioned local board, being the urban sanitary authority for the said district. And whereas your said premises front, adjoin or abut on certain parts of the said street which require to be sewered and made good. Now, therefore, the said local board hereby give you notice, in pursuance of the statutes in that case made and provided, to sewer and make good the same within the space of one calendar month. . . . And take notice that in case you shall for the space of one calendar month from the service hereof neglect or refuse to comply with this notice, or to perform, execute and complete the works hereby required to be executed, or any of them, to the satisfaction of the said local board or their surveyor, the said local board will, in pursuance of the statutes in that behalf made and provided, proceed to execute, finish and complete the same at your expense. And the said local board will thereupon also proceed to declare all costs, charges and expenses paid, expended or incurred by them in consequence of such your neglect or default, to be private improvement expenses, and to enforce payment according to law."

The said Thomas Edward Hammerton took no steps in order to comply with the notice in his lifetime, and he died on the 25th of August, 1875, having appointed the appellants trustees and executors of his will, and having devised to them as such trustees the said property fronting to, adjoining or abutting upon Underbank as aforesaid.

On the 1st of August, 1875, the respondents proceeded to sewer the street mentioned in the notice, and they completed the works in January, 1876.

On the 14th of February, 1876, a notice purporting to be given under the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150, was by order of the board served upon the appellants, requiring them to level, pave, flag and channel the said street called Underbank. [The notice

was similar in terms to the one of March, 1875, *supra*.]

The appellants did not comply with the notice of the 14th of February, 1876, whereupon the respondents proceeded to execute the works, and they completed the same prior to the 4th of June, 1877.

In executing the works comprised in the notice of the 17th of March, 1875, and the 14th of February, 1876, the respondents incurred expenses amounting to 386*l.* 18*s.* 2*d.*

On the 4th of June, 1877, a notice of apportionment was made and served on the appellants as such trustees and executors as aforesaid purporting to apportion their share at the sum of 113*l.* 16*s.* 8*d.*, being the amount sought to be recovered by the respondents, exclusive of the sum of 61*l.* 4*s.* 9*d.*

On the 3rd of September, 1877, the appellants by notice disputed their liability to pay the apportioned amount, and in the same month a notice was duly served upon them requiring payment of the said sum.

On the 26th of April, 1879, the respondents gave proper notice to the appellants of the appointment of an arbitrator on their behalf touching the apportionment of the proportion of the said sum of 386*l.* 18*s.* 2*d.* to be paid by the appellants in respect of the said works performed by the respondents.

The appellants did not appoint an arbitrator on their behalf according to the requirements of the Public Health Act, 1875, nor make any objection to the validity of the appointment by the respondents.

On the 19th of June, 1879, the arbitrator made his award, and awarded that there was due from the appellants to the respondents, as their proportion of the cost of the works, 113*l.* 16*s.* 8*d.*, and ordered that the appellants should bear the costs of the reference, which were taxed at 61*l.* 4*s.* 9*d.* Neither the appellants nor any witnesses on their behalf attended the reference.

On the 5th of September, 1879, payment of the said sums of 113*l.* 16*s.* 8*d.* and 61*l.* 4*s.* 9*d.* was demanded from the appellants, who refused to pay the same.

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At the hearing before the Justices the respondents contended that by section 180 of the Public Health Act, 1875, the award, which was duly made, was final against the appellants.

The appellants, *inter alia* (1), objected that the notice of the 17th of March, 1875, and the 14th of February, 1876, were invalidated by the notice with which the same concluded by reason of its being made thereby to depart from the Form G, in the Public Health Act, 1875, or that, if not, the respondents must be taken to have executed the works upon the footing of charging them as private improvement expenses, and therefore that they could not maintain their present demand, which was founded upon a totally different procedure.

The Justices overruled the objection, and made an order upon the appellants for the payment of the sums of 113*l.* 16*s.* 8*d.* and 61*l.* 4*s.* 9*d.*; and the question for the opinion of the Court was, whether they were right in so doing (2).

(1) Other objections were raised by the appellants, but they were not argued.

(2) The 69th section of the Public Health Act, 1848, under which the first notice was given, is, so far as material, identical with the 150th section of the Public Health Act, 1875 (38 & 39 Vict. c. 55), which repealed the former Act. The Act of 1875, section 150, provides that, "where any street within any urban district (not being a highway repairable by the inhabitants at large), or the carriage-way, footway or any other part of such street, is not sewered, levelled, paved, metalled, flagged, channelled and made good, or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting, adjoining or abutting on such parts thereof as may require to be sewered, levelled, paved, metalled, flagged or channelled, or to be lighted, require them to sewer, level, pave, metal, flag, channel, or make good or to provide proper means for lighting the same within a time to be specified in the notice. . . . If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses."

Cave (*Forbes* with him), for the appellants.—The respondents have given notices purporting to be issued under 11 & 12 Vict. c. 63. s. 69, and 38 & 39 Vict. c. 55. s. 150, which contain substantially the same provisions. The last-mentioned section contains a form applicable to the present circumstances—see Schedule 3, Form G. There are really two distinct forms of procedure for the recovery of such moneys as these: first, by summary proceedings before Justices; secondly, by declaring them to be private improvement expenses, and following the machinery provided by the statute. Here the notices given were bad by the concluding notice, which was a departure from the Form G; and if not bad, the effect of the notices is, that the respondents must be taken to have elected to execute the necessary works upon the footing of charging them as private improvement expenses, and so they are bound by the notice, and cannot recover these moneys by summary procedure.

Edward Clarke and *Glen*, for the respondents.—The addition of the concluding notice is mere surplusage, and does not amount to an election. Even if the expenses incurred must be considered as private improvement expenses, it was entirely at the option of the local board whether they would recover them by a rate.

By section 213, "whenever an urban authority have incurred or become liable to any expenses which by this Act are, or by such authority may be declared to be, private improvement expenses, such authority may, if they think fit, make and levy on the occupier of the premises in respect of which the expenses have been incurred, in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon, at a rate not exceeding five pounds per cent. per annum, in such period, not exceeding thirty years, as the urban authority may in each case determine. Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner for the time being of the premises so long as the same continue to be unoccupied." Sections 214, 215 and 240 contain certain provisions in favour of owners as regards the payment of private improvement expenses.

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MANIET, J.—I think that our judgment must be in favour of the appellants. Under the Public Health Act, 1848, no form was given; but section 150 of the Act of 1875 is substantially the same as section 69 of the older Act, the only difference being that in the later Act a form is given—a difference which, in my judgment, in no way affects the question. Here the local board gave the appellants a notice requiring certain work to be done, and specifying that if such work was not done within a prescribed time the board would execute themselves the necessary works, and declare that the expenses incurred should be “private improvement expenses.” Now, the 150th section of the Act of 1875 draws a clear distinction between the two modes of procedure: the second is an alternative of the first, but does not enable a board to go before the magistrates at all, or to recover private improvement expenses in a summary manner. All they can do is to adopt the procedure laid down in the 213th and two following sections, or else to adopt the procedure prescribed in the 240th section. Either of these two modes of procedure give important and substantial advantages to an owner. I am of opinion that the local board were bound by the notice they have given, and that it was not afterwards in their power to withdraw from the owners the benefit offered. Consequently, I think that the order of the Justices must be rescinded.

STEPHEN, J.—I am of the same opinion. The local board gave to the appellants certain notices under the Public Health Act, requiring certain works to be executed, and stating that if such works were not executed within a prescribed period to the satisfaction of the local board, they would execute the same themselves at the appellants’ expense. Each notice continued and concluded thus: “And the said local board will thereupon also proceed to declare all costs, charges and expenses paid, expended or incurred by them in consequence of such neglect or default, to be private improvement expenses, and to enforce payment according to law.”

Now, this was the notice they gave. Let us now consider its effect, and whether it was a valid notice. The section under

which the notice was given was the 150th section of the Public Health Act, which does not differ from the earlier Act, except in a matter not essential to the present enquiry. The 150th section permits the urban authority, in certain cases, to give notice to the respective owners or occupiers of premises fronting, adjoining or abutting on parts of streets which in the judgment of such urban authority require to be sewered, requiring them to do what is necessary within a time to be specified in the notice. The section thus continues: “If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses.” Now, the 150th section makes it imperative that the notice should have been given to sewer the street. But the notice which was given does not require the appellants to sewer the street in absolute terms. It merely says, “You, the appellants, are to sewer the street, and if you do not, we shall treat the expenses incurred as private improvement expenses.” Mr. Clarke, in his clear argument, contended that the latter portion was altogether nugatory; but to treat it as being of no effect would, in my judgment, be altogether inequitable. There are two distinct modes of procedure laid down in the statute for the recovery of the expenses: the first mode is by summary procedure; the second is by declaring the expenses incurred to be private improvement expenses, which may be recovered either by means of a rate or a rent-charge; but in either of the latter cases the owner is placed in the advantageous position of being saved one-fourth of the cost. The notice given was not, in my judgment, such as was required by the statute, or, if it was, it contained terms which estop

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the board from taking steps contrary to their declared intention. In either point of view the proceedings taken were, in my judgment, void, and the objections raised to them must therefore prevail.

Judgment for appellants.

Solicitors—Geare & Son, agents for Newbould & Gould, Sheffield, for appellants; Horne & Hunter, agents for Thos. Chorlton, Manchester, for respondents.

[IN THE COMMON PLEAS DIVISION.]

1880. { GRAINGER (*appellant*) v. AYNLEY
AND ANOTHER (*respondents*).
Nov. 29. { BROMLEY (*appellant*) v. TAMS
(*respondent*).

Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), ss. 3 and 10—Definition Clause—Sub-workmen.

The respondents were earthenware manufacturers. The appellant was in their employ as a "potters' printer," and by the custom of the trade he found his own "transferrer"—that is, an assistant, without whom the potters' printer was unable to perform his work. The respondents having made a reduction in the wages of persons in their employ, the appellant consented to work at the reduced rate, and presented himself each day at the works ready to continue his employment, but he was unable to work owing to the absence of his transferrer, who refused to work at the reduced wages. The appellant was thereupon summoned under the *Employers and Workmen Act, 1875*, for absenting himself from his employment, and, in exercise of the summary jurisdiction conferred by section 4, the magistrate ordered him to pay damages to the respondents:—Held, that the facts amounted to a dispute under the Act between an employer and a workman, that the appellant was a workman within the meaning of the Act, and that the summons could therefore, by section 4, be heard and determined by a Court of summary jurisdiction.

SPECIAL CASES stated by the stipendiary magistrate for the borough of Stoke-upon-Trent, under 38 & 39 Vict. c. 90,

and 20 & 21 Vict. c. 43, by way of appeal from his decision, ordering the appellant to pay damages to the respondents.

GRAINGER v. AYNLEY.

The appellant was summoned under the *Employers and Workmen Act, 1875*, for absenting himself from the respondents' employment (1). The respondents were earthenware manufacturers at Longton, and the appellant was in their employ as a potters' printer, overlooker and mixer, he having, besides attending to his own work, to overlook and superintend the work of the other potters' printers in the employ of the respondents.

The custom in the pottery trade is to contract to work from Martinmas to Martinmas, subject to a month's notice on either side for determining the contract. The appellant had been in the employ of the respondents about two years prior to Martinmas, 1879.

Prior to Martinmas, 1879, the respondents put up notices on their works that from the Martinmas then approaching they should make a reduction in their workmen's prices of ten per cent. No fresh arrangement or contract was entered into by the appellant, but he continued to work after Martinmas last on the same terms as before. The question of reduction in workmen's wages

(1) 38 & 39 Vict. c. 90. s. 3: "In any proceeding before a County Court, in relation to any dispute between an employer and a workman, arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act), the Court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers."

Section 4: "A dispute under the Act between an employer and a workman may be heard and determined by a Court of summary jurisdiction, and such Court, for the purposes of this Act, shall be deemed to be a Court of civil jurisdiction, and in a proceeding in relation to any such dispute the Court may order payment of any sum which it may find to be due as wages or damages, or otherwise, and may exercise all or any of the powers by this Act conferred on a County Court: Provided that in any proceeding in relation to any such dispute the Court of summary jurisdiction (1) shall not exercise any jurisdiction where the amount claimed exceeds ten pounds. . . ."

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was submitted to arbitration, and some time after Martinmas the arbitrator gave his award, reducing wages eight and a quarter per cent.

The appellant went on working after the reduction in wages, without any fresh arrangement, until the 15th of December, 1879, the day on which he absented himself from the employment of the respondents.

It was asserted by the appellant that in the pottery trade it is impossible for the printer to do his work without the aid of another person called a transferrer. The transferrer is generally a woman; in most cases, as in this case especially, the printer finds his own transferrer.

On the 15th of December, 1879, the transferrer who had been engaged by the appellant, and who worked with him, together with the transferrers of the other printers in the employ of the respondents, having previously given a week's notice, declined to work any longer at the reduced rate of wages, and went out on strike.

The defendant regularly each day presented himself at the works of the respondents, ready to work, but was unable to do so in consequence of the strike of the transferrers.

The magistrate decided that the appellant was a workman within the meaning of section 10 of the said Act (2), and that there was an implied valid contract to work, subject to a month's notice being given on either side; that as the appellant had entered into a contract with the respondents to do certain work on the terms of a month's notice, and had entered into a contract

(2) By the definition clause (section 10) of the Employers and Workmen Act (38 & 39 Vict. c. 90), it is enacted that "the expression 'workman' does not include a domestic or menial servant; but, save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour."

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with the transferrers, on whom he was, according to his own statement, dependent, that they should work for and with him on the terms that they might terminate their engagement without similar notice, the injury to the respondents was wholly caused by the appellant in not taking care when he engaged his transferrers to stipulate for the same length of notice from them as he himself was under from the respondents. The magistrate therefore decided in favour of the respondents, and awarded damages and costs to be paid to them by the appellant.

The questions of law upon which the case is stated for the opinion of the Court are—whether the appellant was a workman within the meaning of the said Act; and, if so, whether there was an implied valid contract to work from Martinmas, 1879, to Martinmas, 1880, subject to a monthly notice; and, if so, whether, as the appellant had engaged his own transferrers, and could have made his own arrangements with them as to notice, he was liable in damages for a breach of contract caused by the transferrers' refusal to work, although he (the appellant) was willing to do so.

BROMLEY v. TAMS.

The facts in this case were substantially the same. The questions of law involved were identical, and the two cases were disposed of by one judgment.

Hopwood (with him *W. S. Wright*), for the appellant *Grainger*; and *Darling*, for the appellant *Bromley*.—The case is not within the Act. The jurisdiction conferred by section 4 is limited to a dispute between employer and workmen. That section and section 10, defining a workman within the Act, shew that the Act applies merely to individual service, and that the Legislature intended only to deal with cases where the workman was subject to imprisonment.

[*LOPES, J.*—Would a working builder who employs hodmen under him be a workman within the Act?]

It is submitted not: he would be a contractor, as is the appellant, and not a workman within the meaning of the Act; he would not contract "personally to

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execute" the work. The failure of the transferrers to attend was caused by the reduction of wages by the employer, and not by any default of the appellant.

Rose, for the respondents.—It would be no answer to an action for the defendant to say that his transferrers failed him. He should have provided against such a contingency—*Ohitty on Contracts* (3). Workmen were formerly subject to imprisonment for breach of contract, whereas masters were not (4). It was to alter this state of the law that 38 & 39 Vict. c. 90 was passed. The Legislature could not have intended to exclude from the Act the large classes of workmen who are aided in their work by assistants whom they themselves engage and pay as in the present case. Skilful workmen in a large number of trades employ subordinates. The potter printer is engaged in "manual labour" under "a contract of service" or "a contract personally to execute" the work, notwithstanding that he has to employ a transferrer. The word "personally" was probably inserted because it did not appear in the corresponding definition clause in the preceding Act. The object of section 10 is to indicate the labouring classes as distinguished from domestic servants, clerks, shopmen and others.

Hopwood, in reply.

LINDLEY, J.—I am of opinion that our judgment must be for the respondents. The questions for our determination—which are the same in both cases—are, first, whether the dispute was one within the meaning of the Act; and secondly, whether the disputants were persons within the meaning of the Act.

Section 3 defines a dispute under the Act to be any dispute between an employer and a workman arising out of or incidental to their relation as such; and one can hardly see under what circumstances the dispute stated in this present case could be said not to be a dispute within the words of that section: it clearly arose out of and was incidental to the relation of employer and workman,

(3) 11th ed. p. 667.

(4) Master and Servant Act, 1867 (30 & 31 Vict. c. 141).

and it appears to me impossible to say it was not fully within section 3.

It has been contended that the appellant was not a workman within the definition given in section 10, and that that section does not extend to anyone who by custom or otherwise has to employ people to do his work. I do not say that the definition clause applies to all employments in the nature of sub-contracts, but it is a different matter to hold that a workman employed on manual labour, who by custom employs others, is not a workman within the meaning of section 10. In the present case the appellant is employed in manual labour, and I cannot see how he fails to come within the section. What the meaning of the antithesis may be it is not necessary to decide; but I should think if a person were to be employed to work for a month or a week he would be employed under a contract of service, and if he were employed to dig a drain he would be employed under a contract personally to execute work or labour. The criterion is manual labour, and I see no reason to place a narrow construction on the Act if one can help it. I am of opinion that this case is clearly within the Act, and that the decision of the magistrate was right and should be affirmed.

LOPES, J.—We have first to decide if this is a dispute within the Act; and, secondly, whether the appellants are workmen within the meaning of the Act. The first point was hardly seriously contended, and I do not therefore say more than that I agree with my brother Lindley that it should be decided in favour of the respondents.

The more material question is, whether the appellants are workmen within the meaning of the Act. It has been contended that the definition of workman, as set out in section 10, only applies where the work is to be personally performed by the person employed, and not when that person employs others; or, as in the illustration put to the appellants' counsel in the course of the argument, it is not to apply to the case of employment of a workman builder who employs hodmen under him. I think this would be too narrow a construction of the Act.

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I desire to say nothing as to the case of a workman employing others under a separate contract, and I do not think it necessary to decide the meaning of the words "contract of service or a contract personally to execute any work or labour;" but I should say that the former employment would apply to the case of an employment for a certain time and the latter to an employment for the performance of some specific work. I agree that the decision of the magistrate was right and should be affirmed.

Judgment for respondent. Leave to appeal refused.

Solicitors — Llewellyn & Ackrill, agents for Llewellyn & Ackrill, Tunstall, for appellant in *Grainger v. Aynsley & Co.*; Ford & Ford, agents for C. J. Welch, Longton, for respondents. Parkins & Perry, agents for Sword, Hanley, for appellant in *Bromley v. Tams*; Ford & Ford, agents for C. J. Welch, Longton, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { PLOMESGATE UNION (appellants) v. WEST HAM UNION
March 25. { (respondents).

Poor—Settlement—Residence for Three Years—"Parish"—39 & 40 Vict. c. 61. s. 34.

Residence for three years partly in one parish and partly in another within the same union does not confer a settlement on a pauper under section 34 of 39 & 40 Vict. c. 61, which applies to persons residing for three years in any "parish."

CASE stated at the quarter sessions for Essex, in an appeal from an order of Justices, dated the 25th of February, 1880, for the removal of Elizabeth Newson and her five children from the West Ham Union to the Plomesgate Union, as last legally settled in the parish of Framlingham, in that union.

Elizabeth Newson was born out of wedlock in the parish of Framlingham. From September, 1874, she resided for two years and five months in the parish

of Bulwell, Nottinghamshire, in the Basford Union; she then lived for one year and eight months in the parish of Basford in the same union, and she then returned to the parish of Bulwell, where she remained until Michaelmas, 1879. She thus resided in the Basford Union for upwards of three years—that is, from September, 1874, to November, 1879—in such manner and under such circumstances as would, in accordance with the several statutes in that behalf, render her irremovable.

If the Court were of opinion that the residence in the parishes of Bulwell and Basford constituted a settlement within the meaning of 39 & 40 Vict. c. 61. s. 34, the order of removal and order of quarter sessions were to be quashed.

Philbrick and Woollett, for the respondents.—The 39 & 40 Vict. c. 61. s. 34 is as follows: "Where any person shall have resided for the term of three years in any parish, in such manner and under such circumstances in each of such years, as would, in accordance with the several statutes in that behalf, render him irremovable, he shall be deemed to be settled therein until he shall acquire a settlement in some other parish by a like residence or otherwise." The pauper in question is not settled in and did not reside for three years in "any parish." She resided in two different parishes. The parishes were in the same union, but the statute does not say "union." The parish was the local unit of the law of settlement, and so remains, although unions have been established for purposes of administration. It is true that by 24 & 25 Vict. c. 55. s. 1, residence in any part of a union confers a status of irremovability, but by 9 & 10 Vict. c. 66. s. 5, the acquisition of a settlement by reason of exemption from liability to be removed is expressly negatived; and also by section 13 of the Union Chargeability Act, 1865 (28 & 29 Vict. c. 79). They cited *Westbury-on-Severn v. Barrow-in-Furness* (1) and *The Brompton Union v. The Carlisle Union* (2).

T. Atkinson, for the appellants.—The

(1) 47 Law J. Rep. M.C. 79.

(2) *Ibid.*, 114.

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34th section of 39 & 40 Vict. c. 61 must be read with the 1st section of 24 & 25 Vict. c. 55. When so read "parish" includes more than one parish in the same union. He cited *The Queen v. Bolton-le-Sands* (3).

LINDLEY, J.—I am of opinion that the respondents are entitled to judgment. The question raised is the meaning of the word "parish" in section 34 of 39 & 40 Vict. c. 61. Two rival theories have been started, one being that "parish" means parish, and the other that it includes union. The Poor Law Amendment Act, 1834, by section 109 defines "parish" as "any city, &c., maintaining its own poor, whether parochial or extra-parochial." It is, however, clear that "parish" was not intended to include a union or agglomeration of parishes. The meaning of the word is said to be different by reason of a series of enactments as to irremovability. But these enactments are expressly precluded from affecting the question of settlement. I therefore think the word "parish" in this statute has its ordinary meaning, and our judgment must be for the respondents.

MATHEW, J., concurred.

Judgment for the respondents.

Solicitors—F. E. Hillary, for respondents; Kingsford, Dorman & Co., for appellants.

[IN THE QUEEN'S BENCH DIVISION.]

1881. } THE QUEEN v. THE JUSTICES OF
March 8. } MONTGOMERYSHIRE.

Poor—Rating—Statute 6 & 7 Will. 4. c. 96. s. 6—Special Sessions—Right of Appeal by Assessment Committee against Order of Special Sessions—Union Assessment Committee Act, 1864 (27 & 28 Vict. c. 39), s. 2.

By 27 & 28 Vict. c. 39. s. 2, an Assessment Committee may, with the consent of the guardians, appear as respondents to an appeal against a poor-rate made for a

parish contained in a union to which the Union Assessment Committee Act, 1862, applies, "but in the name of the guardians, in like manner and with the same incidents and subject to the same liabilities and entitled to the same remedies and rights as in the case of persons other than the overseers to whom notice of appeal may be given":—Held, that an assessment committee who had appeared as respondents at special sessions, under the provisions of 27 & 28 Vict. c. 39. s. 2, were entitled to appeal to quarter sessions in the name of the guardians against the decision of Justices at such special sessions.

In this case a rule nisi had been granted, calling upon the Justices of Montgomeryshire to shew cause why a writ of *mandamus* should not issue, commanding them to enter continuances and try an appeal brought by the assessment committee of the Newtown and Llanidlas Union against an order under the hands of certain Justices at special sessions, by which they directed that the gross estimated rental of certain property should be reduced to 200*l.* and the rateable value to 170*l.*

The material facts were as follows: On the 15th of September, 1880, the assessment committee in question inserted in a supplemental valuation list, submitted to them, pursuant to the statute in that behalf, by the overseers of Newtown parish in the union of Newtown and Llanidlas, whereby the gross estimated rental of a certain hereditament, known as the Royal Welsh Warehouse, Newtown, was increased to 250*l.* per annum, and the rateable value to 212*l.* 10*s.*

On the 29th of September, 1880, the said assessment committee heard and decided against an objection made by Mr. Pryce Jones, the occupier of the said warehouse, and approved the said list.

On the 14th of October, 1880, a poor-rate was made for the parish of Newtown in accordance with the said list, and the said warehouse was assessed at the rateable value of 212*l.* 10*s.*

On the 18th of October, 1880, notice of intention to appeal against the rate to the special sessions, under 6 & 7 Will. 4. c. 96. s. 6, was served by the said Mr.

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Pryce Jones. Notice of such appeal was, pursuant to 27 & 28 Vict. c. 39. s. 1, served on the assessment committee.

On the 27th of October, 1880, the assessment committee obtained leave from the guardians of the union to appear as respondents to the appeal at the special sessions, pursuant to 27 & 28 Vict. c. 39. s. 2.

On the 12th of November, 1880, the appeal of Mr. Pryce Jones came on to be heard before the Justices at special sessions, the assessment committee appearing as respondents to the appeal in the name of the guardians. The Justices decided in favour of the appellant, and ordered the rate to be amended by reducing the gross estimated rental to 200*l.*, and the rateable value to 170*l.*

On the hearing before the special sessions the churchwardens and overseers of Newtown, though nominally respondents, did not oppose the appeal. The appellant himself was one of the churchwardens, and the other churchwarden gave evidence for him on his appeal.

On the 25th of November, 1880, notice of appeal from such order was, in the name of the guardians of the said union, served on Mr. Pryce Jones, and was signed by the clerk of the guardians acting on their behalf.

On the 27th of November, 1880, recognisances to prosecute the appeal were duly entered into by the clerk of the guardians and two sureties, who were guardians of the union.

On the 8th of December, 1880, the guardians passed a resolution confirming the resolution of the assessment committee to appeal from the said order.

On the 8th of January, 1881, the appeal came on for hearing at the Welshpool county sessions, and thereupon, objection being taken on behalf of Mr. Pryce Jones, the respondent to the appeal, the Justices declined to hear such appeal and dismissed the same upon the ground that the appellants had no right to appeal. Thereupon the sessions confirmed the order of the Justices, made at special sessions, and ordered the appellants to pay the respondents' costs.

A rule nisi for a writ of *mandamus*, as above stated, was granted by this divi-

sion on the 29th of January, 1881, against which—

Swetenham shewed cause.—There are three objections to this appeal being heard. First, in no case can an assessment committee in the name of the guardians become appellants in an appeal; secondly, supposing such committee can be appellants in an appeal, it was proved that the notice of appeal was given a week before notice had been sent to each guardian, and long before their consent was obtained; thirdly, the recognisances required by the statute were entered into by the clerk of the guardians in his own name without their consent.

The first proposition is, that no appeal lies unless it be expressly given by statute. By 6 & 7 Will. 4. c. 96. s. 6, the Justices are to hold four special sessions during each year for hearing appeals against rates, and their decision is binding, unless "the person impugning such decision" shall, within fourteen days after the same shall have been made, cause notice to be given of his intention of appealing, and enter into proper recognisances to try the cause at the next quarter sessions. It will doubtless be contended that the assessment committee were enabled to appeal as parties who "impugned the decision" of the Justices. But the question is, Who, at the time of the passing of 6 & 7 Will. 4. c. 96, were the persons who could appeal under that statute? The statute 6 & 7 Will. 4. c. 96. s. 6 for the first time created a Court of special sessions for the purpose of hearing and determining appeals against a rate. The section is first put in motion by a "person aggrieved," and the process he was obliged to adopt in the first place was to give notice to the churchwardens and overseers stating in that notice the different objections he had to the rate, so that they might be informed upon it, and be prepared to meet it. (See 43 Eliz. c. 2. s. 6, and 17 Geo. 2. c. 38. s. 4.) The churchwardens and overseers who are authorised to make the rate must necessarily be the respondents to the appeal under 6 & 7 Will. 4. c. 96. s. 6; and they were the only persons who could impugn the decision of the Justices at special sessions. But there is no means by which

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an assessment committee in the name of the guardians can become appellants under 6 & 7 Will. 4. c. 96. s. 6. An assessment committee can no doubt, by virtue of a subsequent statute (27 & 28 Vict. c. 39. s. 2) (1), become respondents in an appeal, but they cannot take the initiative in the manner which they have attempted to do. It will be contended that inasmuch as the assessment committee could be respondents to the appeal at special sessions, they were necessarily entitled to impugn the decision of the Justices. But though they are allowed to be respondents for the purpose of not allowing the costs to fall upon the overseers, it is the party who makes the rate who alone can appeal to the sessions. All that the assessment committee had to do after the decision of the Justices was to alter the valuation lists in conformity with the decision. By 27 & 28 Vict. c. 39. s. 1, notice of appeal against a poor-rate has to be given to the assessment committee with the grounds of such appeal; and it is absurd to suppose that the Legislature ever intended to place an assessment committee in such a position as to require them to give notice to themselves. The real object of the Legislature in allowing an assessment committee upon certain conditions to be respondents, was to charge the common fund of the union with the costs and so relieve the overseers. (See 27 & 28 Vict. c. 39. s. 8.)

[DENMAN, J.—The second objection seems to us at present to be irrelevant under the circumstances; the third objection cannot be satisfactorily determined on the materials before the Court.]

McIntyre (O'hannell with him) appeared to support the rule.—The argument on the other side is, that an assessment committee, in the name of the guardians,

(1) By 27 & 28 Vict. c. 39. s. 2, the assessment committee of a union may, with the consent of the guardians of a union, after notice shall have been sent to every guardian, appear as respondents to an appeal to special or quarter sessions, "but in the name of the guardians of such union, in like manner and with the same incidents and subject to the same liabilities and entitled to the same remedies and rights as in the case of persons other than the overseers to whom notice of appeal may be given."

have no right of appeal whatsoever. At the time of the passing of 6 & 7 Will. 4. c. 96, the persons who made the rate, and the only persons who could be parties to the appeal, were the churchwardens and overseers of the poor; but the last-mentioned statute widely extends the right of appeal. Then, under the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 2, the guardians of a union are empowered to appoint an assessment committee from among their body, whose duty it is to make out a valuation list. Up to that time the appeal was against the rate made by the overseers, but since the passing of the 25 & 26 Vict. c. 103 the rate can only be made upon the valuation list that has been made by the assessment committee, and there can be no appeal against a rate unless there has first been notice of objection to the valuation list. Therefore, the valuation list is now the basis of all rating, and the objection to a rate must be an objection to a valuation list, and the party must have failed to get relief from the assessment committee before he can appeal against any rate. The result is, that an assessment committee are in exactly the same position with respect to their valuation list that the overseers of the poor were at the time 6 & 7 Will. 4. c. 96 was the only statute applying to appeals. The overseers may make the list, but the list to be binding must be approved by the assessment committee. The statute 27 & 28 Vict. c. 39. s. 2 expressly permits an assessment committee to become respondents to the special or quarter sessions, with all the incidents of parties becoming parties to an appeal. The thing to be decided by the special sessions is the basis of the rate; that is to say, the valuation list. The committee are the persons attacked, and they have to defend their own valuation list, which they can only do by becoming respondents. The valuation being reduced, the committee were aggrieved. Being respondents they are to be respondents in the name of the guardians, "in like manner and with the same incidents and subject to the same liabilities and entitled to the same remedies and rights as in the

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case of persons other than the overseers to whom notice of appeal may be given." In other words, the committee are to be subject to the same liabilities as all other persons, and they are entitled to the same remedies and rights—that is, a remedy against the decision, or a right under the decision, as in the case of persons other than the overseers to whom notice of appeal may be given.

[WILLIAMS, J.—Supposing one person is highly favoured by the reduction of the valuation of some valuable property: there is nobody who can appeal if the guardians cannot appeal. The ratepayer is satisfied; the particular overseers of the particular parish are satisfied; but the only persons who are aggrieved are the union.]

Precisely so; and in this very case the churchwardens and overseers gave evidence in favour of the ratepayer.

DENMAN, J.—I think that this rule must be made absolute for a *mandamus* upon the point, which is clearly a point of substance, and which lies within a very small compass. The question depends upon the construction of section 2 of 27 & 28 Vict. c. 39, coupled with one or two other provisions of the Acts of Parliament. That section provides that an assessment committee of a union may, with the consent of the guardians, after notice sent to each guardian, appear as respondents to an appeal against a poor-rate. This is an appeal of the character to which the section refers, and the assessment committee did appear as respondents to such appeal. The 2nd section, after authorising such appearance, goes on to state that the assessment committee shall do so "in the name of the guardians of such union, in like manner and with the same incidents and subject to the same liabilities and entitled to the same remedies and rights as in the case of persons other than the overseers to whom notice of appeal may be given." Now, the assessment committee, having appeared as respondents to the appeal at the special sessions, and having been unsuccessful there, wished to appeal to the quarter sessions, and they wished to do so in the name of

the guardians of the union. I apprehend they have a right to do so, because it comes within the words of the section, "with the same incidents and subject to the same liabilities and entitled to the same remedies and rights as in the case of persons other than the overseers to whom notice of appeal may be given." It appears to me that an appeal to quarter sessions is one of the incidents of the other appeal, and that they are therefore entitled to that appeal to the quarter sessions. The only difficulty that has occurred to me in so applying the section has been the use of the words "other than the overseers." That did appear to me at one time to create a difficulty, but I think the true answer to that has been given by my brother Williams, who has pointed out that the nature of these appeals is of that kind which is not binding between the ratepaying persons *inter se*, and that, therefore, there was reason to apply the law and to speak of the law applicable to these cases in the words "other than the overseers." The same remedies and rights in the case of persons "other than the overseers" were applicable to this case, because there are cases in which it is parish against parish interested. It is the relative rating of the persons and not merely the individual rating of the persons paying the rate which is contemplated by the Legislature; and there are matters with which the assessment committee and the board of guardians have to deal as questions of appeals from rates. I think upon that point and upon that ground the *mandamus* ought to go.

Other points have been suggested by Mr. Swetenham. The second point seems to me to have nothing in it, namely, that the notice was deficient in the particular case. If the section is applicable in the way I have described, then there is nothing in the second point. Upon the third point it is conceivable that considerable difficulty might arise, because the provisions with regard to recognisances in the case of appeals to quarter sessions are no doubt very stringent; but I do not think upon these materials we have sufficient facts to decide in favour of Mr. Swetenham's clients. If the latter wishes

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to avail himself of this somewhat technical point, he must bring it clearly before the tribunal who will have to decide the *mandamus*; and as no facts are in dispute, the point would be most conveniently raised by means of a Special Case.

POLLOCK, B., and WILLIAMS, J., concurred.

Rule for mandamus made absolute.

Solicitors—Milne, Riddle & Mellor, agents for Williams, Gittins & Taylor, Newtown, for prosecution; Jones, Blaxland & Son, agents for E. Powell, Newtown, for defendants.

[IN THE QUEEN'S BENCH DIVISION.]

1881. } SOUTHERAN (appellant) v.
March 5. } SCOTT (respondent).

Bastardy Order—Subsequent Marriage of Mother—Liability of Putative Father—Statute 35 & 36 Vict. c. 65. s. 3.

A bastardy order, obtained under 35 & 36 Vict. c. 65. s. 3, is not revoked by the subsequent marriage of the mother. Whether the Justices have a discretion of any kind as to continuing to enforce payments under such an order after the marriage of the mother, quære.

CASE stated under 20 & 21 Vict. c. 43.

1. On August 30, 1875, an order was made at petty sessions by Justices for the county of Durham, whereby the appellant was adjudged to be the putative father of a bastard child of the respondent, who, at the date of the birth thereof and of such order, was called Mary Jane Day, and was a single woman. By the order it was ordered that the appellant should pay to the respondent, the mother of the child, so long as she should live, &c., the sum of 2s. weekly for the maintenance and education of the said child, until the said child should attain the age of thirteen years or should die.

2. The appellant had due notice of the order, and from time to time made sundry payments to the respondent, pursuant to the order, but having neglected and re-

fused for the reasons hereinafter stated to continue such payments, information and complaint were made on the 18th of September, 1880, before a Justice, setting forth the fact of the order, and that the payments thereby directed to be made had not been made according thereto, and that there was then in arrear the sum of 10s., being the amount of five weeks' payments.

3. Upon such information and complaint a warrant was issued for the apprehension of the appellant for disobedience of the order, and he was brought before the Justices in petty sessions on the 2nd day of October, 1880.

4. It was proved at the hearing that subsequent to the date of the order the respondent became the wife of Robert Scott, who was still living. No evidence was given that the said Robert Scott, the husband of the respondent, had or had not the ability and means of maintaining and educating the bastard child.

5. The Justices gave judgment against the appellant, being of opinion that he was liable to make the payments under the order, and decided that he had not shewn cause why the sum of 10s. should not be paid.

The question for the opinion of the Court was, whether, upon the above facts, the marriage of the respondent, subsequent to the date of the order, had the effect of revoking such order or of suspending it during the continuance of the marriage, and of relieving the appellant from liability to make payments thereunder.

Oock, for the appellant.—The bastardy order was put an end to by marriage. By 4 & 5 Will. 4. c. 76. s. 57, "Every man who shall marry a woman having a child at the time of such marriage, whether such child be legitimate or illegitimate, shall be liable to maintain such child as part of his family." In the statute 7 & 8 Vict. c. 101. s. 5 there was a proviso that no order for the maintenance of a bastard child should be of any force after the marriage of the mother; and although the same proviso is not to be found under the statute under which the bastardy order was ob-

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tained (35 & 36 Vict. c. 65), the Legislature never intended that such payments should continue as a matter of course. It is contended that the order ceased upon marriage; but at all events there was a discretionary power on the part of the Justices as to whether such order should be continued or not. In *Stacey v. Lintell* (1), Lush, J., said, "I think the effect is this, that the order does not now become *ipso facto* void upon the marriage of the woman, but if the order has been made while she was single, it may be continued after her marriage under the order of the Justices until the child is thirteen." In that case the present question did not arise, but the observations of Lush, J., tend to shew that even if the order is not altogether void, as contended for, the matter is now left to the discretion of the Justices. He also cited *Lang v. Spicer* (2).

Meek, for the respondent, was not called upon to argue.

FIELD, J.—I confess I think this a very plain case. It may or may not be that the Justices have in some shape a discretionary power as to continuing to enforce payments under a bastardy order after the marriage of the mother; it is unnecessary to decide that point here. The Justices have decided that the appellant was liable to make the payments, and that he had not shewn cause why such payments should not be made; and the only question they ask is, whether the respondent's marriage with Scott had the effect of revoking or suspending the order during the continuance of the marriage. I answer the question submitted to us in the negative, and consequently the decision of the Justices must stand.

MANISTY, J.—I agree. I think the order was not revoked by marriage.

Solicitors—Purkis & Perry, for appellant; Crowdy, Son & Tarry, agents for W. W. & T. P. Branton, West Hartlepool, for respondent.

[CROWN CASE RESERVED.]

1881. }
March 5. } THE QUEEN v. WILLSHIRE.*

Bigamy—Presumption of Life—Onus probandi—Conflicting Presumptions.

In 1864 the prisoner married A. In 1868, A being alive, he married B, and was convicted of bigamy. In 1879 he married C, and in 1880, C being alive, he married D.

The prisoner was convicted of bigamy on an indictment charging the marriage with D in the lifetime of C. For the defence the previous conviction was produced in order to invalidate the marriage with C, by raising the presumption that A was still alive in 1879, no evidence being given as to her death. The Judge at the trial ruled that it lay on the prisoner to prove that A was alive in 1879:—

Held, that this ruling was wrong, and that, it having been proved that A was alive in 1868, it was for the Crown to give evidence to rebut the presumption of the continuance of A's life.

CASE reserved by the Common Serjeant of the City of London.

The prisoner was tried at the Central Criminal Court.

The indictment charged that he married Charlotte Georgina Lavers on the 7th of September, 1879, and that he feloniously married Edith Maria Miller on the 23rd of September, 1880, his wife Charlotte Georgina being then alive. The indictment also charged that the prisoner had been previously convicted of felony at the Central Criminal Court in the month of June, 1868.

A marriage between the prisoner and Charlotte Georgina Lavers on the 7th of September, 1879, and a subsequent marriage between the prisoner and Edith Maria Miller on the 23rd of September, 1880, were clearly proved. It was also proved that at the time of the prisoner's marriage to Edith Maria Miller, his alleged wife Charlotte Georgina was alive. When the case for the prosecution was concluded, the prisoner's counsel asked the counsel for the prosecution to call a

* *Coram* Lord Coleridge, C.J.; Lindley, J.; Hawkins, J.; Lopes, J.; and Bowen, J.

(1) 48 Law J. Rep. M.C. 109; Law Rep. 4 Q.B.D. 291.

(2) 1 Mee. & W. 129; 5 Law J. Rep. M.C. 60.

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witness whose name appeared on the indictment, but the counsel for the prosecution declined to call him. The prisoner's counsel then himself called the witness, who produced a certificate of the previous conviction of the prisoner for felony in June, 1868. The indictment for this felony and the caption were also produced in Court by the proper officer at the instance of the prisoner's counsel.

The indictment was for bigamy, and alleged that the prisoner married Ellen Earle on the 31st of March, 1864, and feloniously married Ada Mary Susan Leslie on the 22nd of April, 1868, his wife Ellen Earle being then alive.

The prisoner's counsel contended that he had proved that the prisoner had a wife living in June, 1868, and that in order to convict the prisoner on the present indictment it was incumbent on the prosecution to shew that this wife was dead on the 7th of September, 1879, when the prisoner married Charlotte Georgina Lavers.

Counsel for the prosecution contended that there being no presumption of law that Ellen Earle was alive on the 7th of September, 1879, when the prisoner married Charlotte Georgina Lavers (the presumption (if any) after seven years, being indeed the other way), and a *prima facie* case of bigamy having been clearly proved by the prosecution on the present indictment, the *onus* was thrown upon the prisoner of shewing that Ellen Earle was alive on the 7th of September, 1879, when the prisoner married Charlotte Georgina Lavers.

The Common Serjeant held that the burthen of proof was on the prisoner. No evidence was offered by the prisoner's counsel that Ellen Earle was alive on the 7th of September, 1879. There was no evidence that the alleged marriage of the prisoner with Ellen Earle was declared void or dissolved by any Court of competent jurisdiction.

The prisoner was found guilty. He was then arraigned on that part of the indictment which charged the previous conviction of felony in June, 1868, and pleaded guilty.

The question reserved for the opinion of the Court for the consideration of

Crown Cases Reserved, was, whether the prisoner had been properly convicted of feloniously marrying Edith Maria Miller, his wife Charlotte Georgina being then alive.

Ribton, for the prisoner.—It was for the prosecution to prove that Charlotte Lavers was the lawful wife of the prisoner, and that Ellen Earle, the prisoner's first wife, was dead. Ellen Earle was proved to be alive in 1868, and in the absence of any evidence to the contrary, the presumption is that she was alive in 1879. The presumption of law is in favour of a continuance of a life.

[LOPEZ, J.—In *The Queen v. Lumley* (1) it was held that there was no presumption either way, and that it was a question for the jury whether the wife was living or dead.]

The criminal law requires the prosecution to prove all the facts necessary to constitute the offence, and does not cast the burthen upon the prisoner of proving his innocence.

Poland (*Montagu Williams* with him), for the prosecution.—The conviction was right. There was a *prima facie* case proved against the prisoner. The prisoner described himself when he married Charlotte Lavers as a "bachelor," and by his act furnished evidence against himself that he was free to marry. A *prima facie* case thus being made, it was for the prisoner to displace it by evidence. The prisoner only shewed that in 1868 his first wife, Ellen Earle, was alive—a fact which is equally consistent with her being alive or dead in 1879.

[LORD COLERIDGE, C.J.—The learned Common Serjeant ruled that the prisoner was bound to shew that Ellen Earle was alive in 1879. He did not leave it to the jury to say whether, upon the conflicting presumptions, she was then alive or dead.]

The statute as to bigamy (24 & 25 Vict. c. 100. s. 57) sanctions a presumption that a person not heard of for seven years is dead.

[LORD COLERIDGE, C.J., referred to *Doe*

(1) 38 Law J. Rep. M.C. 86; Law Rep. 1 C.C.R. 196.

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d. Knight v. Nepean (2). HAWKINS, J.—Ought not the direction to the jury to have been that it was proved that Ellen Earle was alive in 1868, and that there was no further evidence upon the point, except that the prisoner had in 1879 presented himself to be married as one free to marry, which was, in effect, a representation by him that he was legally free so to do?—and then, would it not have been for the jury to find whether Ellen Earle had died before the marriage with Charlotte Georgina Lavers?]

The facts were all left to the jury, with a direction that, under the circumstances, the burthen of proving that Ellen Earle was alive in 1879 was on the prisoner.

LORD COLERIDGE, C.J.—I am of opinion that this conviction cannot be sustained. The facts are short and are clearly stated in the case. There was an undoubtedly valid marriage contracted by the prisoner in 1864, and there was some evidence that the woman then married to the prisoner was alive in 1868. In 1879 the prisoner went through the ceremony of marriage with another woman. It is said, and I think rightly, that there is a presumption in favour of the validity of this latter marriage, but the prisoner shewed that there was a valid marriage in 1864, and gave some evidence that the woman he then married was alive in 1868. He thus set up the existence of a life in 1868, which, in the absence of any evidence to the contrary, will be presumed to have continued in 1879. It is said that the fact of the marriage in 1879 shews either that the prisoner must have stated that he was an unmarried man and free to marry then, or that the presumption that the prisoner was then innocent of any crime was sufficient to rebut the presumption of the continuance of the life of the woman he married in 1864. I agree that this conflict of presumptions was sufficient to raise a question of fact for the jury to determine. It was for the jury to decide whether the man told or acted a falsehood for the purpose of marrying in 1879, or whether his real wife was then dead. The learned Common Ser-

jeant did not leave the question to the jury, but, on these conflicting presumptions, held that the burthen of proof was on the prisoner, who, besides shewing the existence of the life in 1868, was bound to prove that it continued till 1879. There is no such rule of law. The prisoner was not bound to do more than set up the life in 1868, which would be presumed to continue, and it was then for the prosecution to shew by evidence that that presumption was rebutted. I am therefore of opinion that this ruling was wrong, and that the conviction cannot be sustained.

LINDLEY, J., HAWKINS, J., LOPES, J., and BOWEN, J., concurred.

Conviction quashed.

Solicitor—The Solicitor to the Treasury, for the prosecution.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { CAIGER AND OTHERS (appellants) v. THE VESTRY OF
March 15. { ST. MARY, ISLINGTON (respondents).

Metropolitan Management Acts (18 & 19 Vict. c. 120; 25 & 26 Vict. c. 102)—*Contribution towards new Street*—"House and Land"—*Dissenting Chapel*.

The appellants were the trustees of a chapel which abutted on and formed part of a new street within the meaning of 18 & 19 Vict. c. 120. The chapel was registered as a place of religious worship, but had not been consecrated, and there was no dedication of the land in perpetuity. Attached to the chapel was a vestry, and there were also rooms for a caretaker, besides lecture and schoolrooms underneath the chapel:—Held, that the trustees were the owners of a "house" within the meaning of 18 & 19 Vict. c. 120. s. 105, or of land within 25 & 26 Vict. c. 102. s. 77, and were liable to contribute to the expense of making and paving the street.

This was a Case stated under 20 & 21 Vict. c. 43.

The appellants appeared before the

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petty sessions, at the Vestry Hall at Islington, to answer to a complaint duly made by the vestry of the parish of St. Mary's, Islington, in the county of Middlesex, "that they, being the owners of the Highbury Hill Chapel, in Aubert Park, which said chapel abuts on and forms a part of the said Aubert Park, in the said parish of St. Mary's, Islington, being a new street within the meaning of a certain Act of Parliament made and passed in the 18th and 19th years of the reign of her present Majesty Queen Victoria, intituled "An Act for the better Local Management of the Metropolis," and also of the several Acts amending the same (19 & 20 Vict. c. 111, 21 & 22 Vict. c. 104, and 25 & 26 Vict. c. 102), and being within the jurisdiction of the said vestry, and within the area of the district defined by the said Acts, which said new street had been laid out and made, but which had not been made and paved to the satisfaction of the said vestry, had not on demand paid to the said vestry the sum of 211*l.* 3*s.* 4*d.*, being the proportion of the estimated expense, as determined by the surveyor for the time being of the said vestry, to be paid by them for providing and laying the pavement, and making the road in the said new street, in respect of the said chapel of which they were the owners;" and after several adjournments of the hearing, the Justices, on the 16th day of December, 1880, made an order upon the appellants for the payment to the respondents of the sum of 211*l.* 3*s.* 4*d.* as claimed by the said respondents.

The following facts were admitted:—

1. The passing of a resolution of the said vestry that the new street called Aubert Park should be made and paved.

2. The passing of a resolution by the said vestry that the estimated expense of making and paving the new street, as determined by the surveyor of the said vestry, be apportioned on the owners of the houses and land abutting on and forming part of such street, wherein the owners of the said Highbury Hill Chapel were assessed in the before-mentioned sum of 211*l.* 3*s.* 4*d.* as the proportion of the said estimated expense to be paid by them.

3. The demand by the vestry on the appellants of the said sum, and their refusal to pay the same.

4. That the appellants are the lessees of the land on which the chapel and other buildings have been erected (1).

It was further admitted by the appellants, and agreed to by the respondents, that the said chapel is duly registered as a place of religious worship, and that there has been no dedication of the land in perpetuity (the tenure being leasehold), nor has the chapel been consecrated according to the rites of the Church of England; that there are, in addition to the chapel, vestries, three rooms over the vestry for the chapel caretaker and his family, and lecture-rooms and school-rooms underneath the said chapel; that

(1) The original lease was dated March 20, 1872, and stated that in consideration of the expense incurred in building a chapel and other buildings, the plot of ground, together with the church or chapel and schoolroom, or lecture-hall and buildings there recently erected on the said ground, were demised to the lessees for the term of 150 years from the 25th of March, 1870, at the annual rent of 10*l.* The lease contained (among others) a covenant on the part of the lessees not to use the premises, without the lessors' consent, "for any other purpose than, as to the said church or chapel, as a place of worship for Protestant dissenters; . . . and, as to the school, for the purpose of a Sunday-school in connection with the said church or chapel; and as to either the said church or chapel, and the said school and the lecture-hall, for religious meetings or other religious purposes in connection with the said church or chapel; with provision that the same may be occasionally used on weekdays for lectures or meetings for educational, scientific or charitable purposes." The lease also contained the usual powers of re-entry by the lessor on default by the lessees.

By an indenture, dated the 4th of February, 1879, the residue of the term comprised in the above lease was assigned to the appellants "upon trust to permit the said premises to be used as a place of public worship by the said church or society; . . . and to permit to officiate in the said church and to reside in any house . . . such person as the society should elect as their minister, . . . and to permit the said lecture-hall and premises to be used for the holding of such religious meetings, and for such other religious purposes, or for the delivering on weekdays of such lectures or the holding on weekdays of such meetings for educational, scientific or charitable purposes, and for such other purposes, not being contrary to the covenants of the original lease, as the members of the said society should direct and appoint."

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the appellants are assessed in the parochial rates in respect of the caretaker's rooms at 60*l.* per annum, and that they pay the rates thereon.

It was contended by the appellants that the said chapel and premises were not liable to be rated towards the costs of making the said road and flagging the footway, on the grounds, among others, that the said chapel is neither a "house" nor "land" within the meaning of the Metropolis Management Acts (18 & 19 Vict. c. 120. s. 105, and the 25 & 26 Vict. c. 102. s. 77), and that they are not owners of the same within the 250th section of the Act 18 & 19 Vict. c. 120.

The respondents contended, in reply, that the chapel and premises had not been consecrated, and that the lands had not been dedicated in perpetuity, but that it was a leasehold hereditament subject to the usual covenants of a building lease for payment of rent, repairs, rates, taxes and impositions, and that the lease contained a covenant on the part of the appellants to make and maintain the sewers, roads and footpaths in common with the lessees of other parts of the estate until the same were taken under the jurisdiction of the vestry, which said last-mentioned covenant would be defeated and rendered ineffectual to a certain extent if the appellants' contentions were held good, and a greater burthen thrown upon the other owners and lessees, who would have to pay for the proportion of the costs of making the new street assessed to the appellants; that on a part of the premises parochial rates have been assessed and paid by the appellants; that the said premises were liable to be assessed.

The Justices decided, first, that although the said chapel and other buildings might not come within the strict literal meaning of the word "house" in the 105th section of the Act 18 & 19 Vict. c. 120, they are within the meaning of the 77th section of the Act 25 & 26 Vict. c. 102, inasmuch as they are situate on "land" leased to the appellants; and, secondly, that, inasmuch as the appellants, without contravening the covenants of the lease and deed of trust, might let the premises at a rack rent to a person

who might reside in a house therein, and derive an income from pew rents, &c., while using the chapel and rooms for the purposes set forth in the lease and deed of trust, they were the "owners" of the premises within the meaning of the said Acts, and that they were therefore liable to the payment of the proportion of the cost of making and paving the said new street on which the said land bounds or abuts. Accordingly the Justices made an order upon them for the payment to the respondents of the said sum of 211*l.* 3*s.* 4*d.* so claimed by the vestry, as the proportion of the cost payable by them, the said appellants, for the making and paving of the said new street.

The questions for the consideration of the Court were:—

1. Whether the said premises were either a "house" within the meaning of the 105th section of the 18 & 19 Vict. c. 120, or "land" (upon part of which buildings are situate) within the meaning of the 77th section of the 25 & 26 Vict. c. 102; and

2. Whether the appellants are the "owners" of the said premises within the meaning of the said Acts, as being the lessees under a rent reserved, and who would receive the rack rent thereof if the same were let at a rack rent within the meaning of the 250th section of 18 & 19 Vict. c. 120.

If the Court should be of opinion that the appellants are liable to contribute to the expenses of making and paving the said street, the order so made was to be enforced, otherwise the same was to be reversed.

Bompas (Arnold Morley with him), for the appellants.—The question is, whether the appellants are liable as being "owners" either of "house" or "land" within 18 & 19 Vict. c. 120. s. 105, or 25 & 26 Vict. c. 102. s. 77 (2). It is contended, in

(2) By 18 & 19 Vict. c. 120. s. 105, the expenses of paving a new street are to be charged on the owners of houses forming such street. By section 250, the word "owner" shall mean the person for the time being receiving the rack rent of the lands or premises, whether on his own account or as agent or trustee for any other person, or who would

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the first place, that these premises are neither a house nor land within the above-mentioned statutes. In *Angell v. The Vestry of Paddington* (3) it was expressly decided that a church together with the land appurtenant to it was not rateable either as a "house" or "land" to the expenses of paving a new street under these same statutes. (See also the judgment of Lord Coleridge, C.J., in *The Plumstead Board of Works v. The British Land Company* (4).) It cannot make any difference that by the terms of the trust certain educational and scientific lectures may be given. (See 6 & 7 Vict. c. 36, which exempts scientific institutions from parochial rates.) If a chapel is not a "house," then the term "land" is not an appropriate name to apply to it, though the part around it is land. Moreover, "land," in contradistinction to "house," means vacant land, and should be assessed accordingly. They cited *Higgins v. Harding* (5).

Secondly, even if this building be a "house" or "land," the appellants are not the "owners" of it. The 250th section defines an owner to be the "person for the time being receiving the rack rent of the land or premises, . . . or who would so receive the same if such land or premises were let at a rack rent." The appellants pay a rack rent; moreover, the section does not include as "owners" the trustees of a building which could not be let at a rack rent, and who could not

receive such a rack rent even if it could be let.

The Attorney-General (Sir Henry James) and J. F. Olerk, for the respondents.—This is not a question of rating; it is an order made by Justices for a sum of money. *Prima facie*, all property ought to be made liable for the expenses incurred by the erection of new approaches giving additional value to premises. It is for the appellants to prove their exemption. This is not a "chapel" in the legal sense; in the case cited there was actual consecration, and a dedication to ecclesiastical purposes for all time. There is no such thing as consecration for the purpose of Nonconformist worship. The building is not used exclusively for a chapel—lectures are given in it, and money can be taken. The chapel might be sold to-morrow and converted into a circus by consent of the parties. If there is a breach of covenant a right of re-entry is given. It was clearly not in the contemplation of the parties that the building should exist as a chapel for all time. Persons cannot claim an exemption under these statutes merely by a contract *inter partes*. The judgment of Lord Mansfield in *Robson v. Hyde* (6) is decisive of this case, shewing clearly the distinction between a place of public worship and a church. In that case it was decided that a private building always used as a chapel, and by contract never to be used for any other purpose, is, if a profit is made of it, rateable to the poor. Lord Mansfield in giving judgment said, "The doubt in this case can only have arisen from the use of the word 'chapel'; but this building is not such in an ecclesiastical sense. It is not a consecrated place; the ecclesiastical law cannot take notice of it. It is a mere private room, let out, it is true, at present for the purposes of religious worship, but which at his pleasure the owner may apply to any other use. It is said that he is restricted from doing this by covenant; but the restriction by covenant cannot alter the nature of the property."

On the question of "ownership," they cited *Bowditch v. The Wakefield Local*

so receive the same if such lands or premises were let at a rack rent.

By section 110 of 25 & 26 Vict. c. 102, that Act is to be construed as one with 18 & 19 Vict. c. 120.

By 25 & 26 Vict. c. 102. s. 77, it is enacted that, where any vestry or district board shall, under the powers given by section 105 of 18 & 19 Vict. c. 120, have paved or be about to pave any new street, the owners of the land bounding and abutting on such street shall be liable to contribute to the expenses of paving the same, as well as the owners of the houses therein; provided that it shall be lawful for the vestry or district board to charge the owners of land in a less proportion than the owners of house property, &c.

(3) 9 B. & S. 496; 37 Law J. Rep. M.C. 171.

(4) 44 Law J. Rep. Q.B. 38; Law Rep. 10 Q.B. 203.

(5) 42 Law J. Rep. M.C. 31; Law Rep. 8 Q.B. 7.

(6) Cald. Rep. 310.

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Board (7), where it was decided that trustees who had no power to let premises, nor to receive any rent in respect of them, were held, notwithstanding, to be liable as owners on the ground that they would have the rent if the premises were actually let.

Bompas replied.

GROVE, J.—I am of opinion that the decision arrived at by the Justices was quite right and should be affirmed. The main question we are called upon to determine is, whether these premises are either a "house" or "land" within the meaning of the Metropolitan Management Acts. Now I am of opinion that the building in question is a house in the statutes referred to. The building is described in the case as a chapel duly registered as a place of religious worship, but there has been no dedication of the land in perpetuity, nor has the chapel been consecrated according to the rites of the Church of England. In addition to the chapel there are vestries and rooms for the caretaker, and also lecture and school-rooms underneath the chapel. The only part of the building which could not be used as a house, in its popular sense, is the upper part of it, which is used as a chapel, and concerning which there are provisions in the deed to the effect that it should not be used for any other purpose. There is nothing except the covenant *inter partes*, and which could be waived by the lessor, to bind the lessee to continue its use as a chapel. I agree with what fell from the Attorney-General during the argument, namely, that parties cannot by mere agreement alter the liability imposed by the statute upon houses and land; otherwise it would be very easy to evade the statute by inserting covenants in a lease, and not insisting on their performance. I do not think, therefore, that any statutory liability of this kind can be evaded by a mere covenant with parties which may or may not be insisted upon.

Now what is the building if it is not a house? It may be called a chapel, but

(7) 40 Law J. Rep. M.C. 214; Law Rep. 6 Q.B. 567.

that does not prevent the whole building being a "house;" and I don't agree that the term "house" must be confined to the popular sense of the word. Nor do I agree with the interpretation sought to be put upon Lord Coleridge's judgment in the Exchequer Chamber in the case which has been cited. In *The Plumstead Board of Works v. The British Land Company* (4) the question argued was whether certain cross roads could be said to be "land," and as such liable to contribute towards the cost of paving a new street. And Lord Coleridge, reverting to *Angell's Case* (3), expressed the opinion, not that a church was not a "house," but that it was not a "house" for the purposes of the Act. And why? Because it could not be used for the purposes for which a house was used, but was consecrated and so dedicated to permanent and unalterable uses. And the same distinction was taken in *Robson v. Hyde* (6). The reason is not because the consecration was for religious purposes, but because, by the effect of consecration, the domination, so to speak, over the building was removed from the owner; and, being so removed, the building was no longer a "house" in the ordinary sense. This case, therefore, does not fall within the principle of *Angell's Case* (3). The distinction is very clearly pointed out by Lord Mansfield in the passage read by the Attorney-General during the course of the argument.

It is no doubt difficult to define exactly what a house is. I suppose a wall, for instance, is not a house. There have been numerous cases under the Registration Acts which throw light on what is and what is not a house within these Acts. But we are not now considering the Registration Acts, and a building, in my judgment, may well be a "house" for the purposes of the Metropolitan Management Acts, though it may not be a "house" under the Registration Acts. When I look at the object of the statutes I feel no hesitation in holding that this building is liable to be assessed. There are caretaker's rooms, lecture and schoolrooms, and there is nothing to prevent the tenant from receiving money for the use of these rooms. I see nothing

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therefore to prevent such a building as this coming within the fair meaning of the word "house"; indeed, I don't know what other term can be so aptly applied to it. If I should call it a chapel I should misdescribe it, because the legal meaning of the term "chapel" is a chapel of the Church of England. Therefore to call it a "chapel" would not make it the less a "house." Then arises the question, whether this case more properly comes within 18 & 19 Vict. c. 120. s. 105, where "houses" alone are spoken of, or "land" within 25 & 26 Vict. c. 102. s. 77. Now I am of opinion that if the building was not a "house" within the former Act, it comes within the 77th section of 25 & 26 Vict. c. 102; and though in the latter case the *quantum* of assessment might be affected, we are not asked anything as to that; under whichever statute, therefore, the liability arises, my judgment would be the same. As regards the *quantum*, I will only say I don't agree that if the case falls within section 77 of 25 & 26 Vict. c. 102, the land ought to be assessed as bare naked land; but I think it may be valued with its accessories, and is therefore liable to be rated higher than mere agricultural land.

The only remaining question is, whether the parties are "owners" within the meaning of the statute. I think they are. There is nothing save the agreement, which the parties are not bound to enforce, to prevent the premises being let at a rack rent. I don't think the lessees hold it themselves at a rack rent, but at a rent under the rack rent; but even if it were otherwise, still, if they had the power to receive a higher rent for it (and they have such a power but for the agreement *inter partes*), I think they come within the latter part of the section. If we came to the opposite conclusion, it seems to me that the effect of our judgment would be to permit parties to make these statutory provisions inoperative merely by putting prohibitory terms in their agreement, the performance of which they can waive at pleasure.

I therefore have come to the conclusion that our judgment must be for the respondents, and that the order of the Justices must be affirmed.

LINDLEY, J.—I am of the same opinion. What the appellants want us to decide is that the trustees are not owners of a "house" or "land." Looking at the statutes on which this question turns, their effect, as it seems to me, is to make both owners of house and land liable for these expenses. Why is this chapel not within these statutes? Because, so it is contended, the principle laid down in *Angell's Case* (3) applies. But all that was decided there was that a church consecrated for ever to ecclesiastical purposes was not liable to be assessed as a "house." This case is as unlike the one I have cited as it can be; the only resemblance that I can see is that both structures may be used for the same purpose. The differences are apparent enough, and have already been sufficiently commented on by my brother Grove. The decision in *The Plumstead Board of Works v. The British Land Company* (4), which was a question of cross roads, does not touch the present case. This building, in my judgment, falls within one or the other description contained in the statutes: I should say it might be brought within either. Having regard to the object of the Acts and the wording of the sections, I should say everything was intended to be included except churches properly so called.

With respect to the further question, whether the appellants are "owners," I have come to the conclusion that they are. As trustees they can let for the benefit of their *cestuis que trust*. It may be that this congregation will in time find a more suitable place to worship in, and then the trustees can let it. Considering the facts stated in the Special Case, I am not prepared to assume that these trustees pay rack rent, but I think they clearly come within the latter part of the definition given to the term "owner" in section 250 of the Act of 1855.

For these reasons I think that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors—T. C. Williams and Shephard & Sons, for appellants; John Layton, for respondents.

[IN THE COMMON PLEAS DIVISION.]

1881. } RICHARDSON (*appellant*) v.
Feb. 24. } SAUNDERS (*respondent*).

Elementary Education Acts, 1870 and 1876—Compliance with Attendance Order—Attendance without Fees—Liability of Parent to Conviction under 39 & 40 Vict. c. 79. s. 12—Remission of Fees, 33 & 34 Vict. c. 75. s. 17.

A was summoned by the local School Board of Belgrave in the county of Leicester, and an order was made on him to cause his child to attend the school and to see that that order was complied with. A sent his child but without the school fees. On an information laid before the Justices, A was convicted of not complying with the order, and adjudged to pay a fine of 5s., to be levied, if necessary, by distress, and in the event of insufficiency of distress, it was ordered that A be imprisoned for five days unless the fine and costs should be sooner paid:—Held, on appeal, that notwithstanding that A had not applied to the guardians, under 39 & 40 Vict. c. 79. s. 10, to pay the fees, and had refused to obtain a remission of them, under 33 & 34 Vict. c. 75. s. 17, he was not liable to conviction under 39 & 40 Vict. c. 79. s. 12, as he had in fact complied with the order to cause the child to attend the school.

This was an appeal by Special Case, stated under 42 & 43 Vict. c. 49, from a conviction by the Justices for the county of Leicester, on an information preferred by the respondent on behalf of the School Board of Belgrave in the said county, that the appellant, John Richardson, being the parent of Amy Richardson, residing in the said parish of Belgrave, and subject to the provisions of the Elementary Education Acts, unlawfully did not cause the said Amy Richardson to attend school as required by an attendance order made by a Court of summary jurisdiction. It was proved or admitted that the attendance order was duly made and served, that the child was sent by the father to the school, but without the fees, and that the father, who was out of work, refused to apply to the guardians to pay the fees or to ask for a remission. The child was

refused admission because the fees were not sent.

The question of law for the Court was whether the appellant was properly convicted of not complying with the attendance order.

Hensman, for the appellant.—This conviction should be quashed because the appellant has, by sending the child to school, complied with the order, as the Elementary Acts have no provisions, nor have any by-laws been made thereunder, to compel parents to send school fees with the children, or imposing a penalty for not so sending them.

Douglas Walker, for the respondent.—Though there is no provision in the Acts for the prepayment of school fees, it is a rule adopted from the course taken in the schools of which the board schools have taken the place, to demand them beforehand, as there is no power under the Act to enforce any payment of fees. The duty of educating the child is imposed for the first time as a duty on the parent by 39 & 40 Vict. c. 79. s. 4. If through poverty he is unable to meet the expense of performing that duty, he can apply under section 10 to the guardians to pay the fees for him. 33 & 34 Vict. c. 75. s. 74 gives power to school boards to make by-laws as to the remission of fees, and he can, if proved to be unable to pay the fees, get them remitted. But here the appellant was not proved to be unable to pay the fees. The evidence was only that he was out of work. It being, therefore, by his own fault that the fees were not paid or remitted, sending the child without the fees was not causing the child to attend in compliance with the order.

Hensman, in reply.—This is practically a criminal proceeding. The appellant is an ignorant man, and therefore the plain reading of the words of the order should, if possible, be taken to be the true reading. The words are "cause the child to attend." He did, in fact, send the child. True, it was without the fees; but in order to sustain the charge of disobedience to the order it would be necessary to read it as though the words were "cause the child to attend with the fees." Attendance means sending the child to receive educa-

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tion and refers to a physical act—see sections 17, 36, 74 of the Act of 1870, and section 11 of that of 1876, the last of which created a fresh offence with two sub-divisions—first, not causing the child to attend; second, habitually neglecting to cause the child to attend—*Ex parte The School Board for London; in re Murphy* (1).

LINDLEY, J.—This is a case of considerable importance. The question as stated by the Justices is very simple, namely, whether sending a child to a board school without the fees, which it appears it is the rule to require to be prepaid, is, or is not, a failure to comply with an attendance order. The authority on which the attendance order in this case was made is not stated. It runs thus: "We do order the said Amy Richardson to attend the board school, being a certified efficient school at Belgrave, in the county of Leicester, every time the said school shall be open, and that the said defendant do see that this our order is complied with." The case states that the appellant did cause the child to go to the school; and the question is, Was, or was not, that a compliance with that order? Now in what sense is the word "attend" used in the Act authorising the granting an attendance order? At first sight it seems quite plain that there was a compliance with the order, and the only doubt in my mind arose from the fact that section 10 enables a parent to apply to the guardians to pay the fee, so that although he is a poor man there exists a method of getting them paid. This doubt, however, I think was unfounded, and the true construction of the Act is such that I am of opinion that the appellant has caused his child to attend the school. I see that there may be a difficulty in forcing him to pay the fees or get them remitted, but we cannot strain the sections of the Act in order to avoid such a difficulty; and looking at those sections I think it becomes quite plain that the word "attend" is used in its *prima facie* meaning. The excuses for non-attendance in section 11 point to

a physical attendance, and there is nothing to indicate an attendance with fees. Attendance really means "going to school," and this is all the Act means. If there is any desire for other regulations to be complied with, as that the child should come with a clean face, or with the fees in hand, by-laws should be made enacting it. I think the appellant has complied with the order and that the conviction must be quashed.

LOPES, J.—The appellant has been convicted of unlawfully not causing his child to attend, has been fined five shillings, and is liable in default to imprisonment for five days. It is admitted that he did send his child to the school, but without the fees—which, according to the respondent's contention, is no attendance at all—since the father might have got remission, or, by proving his inability through poverty to pay the fees, have got the money paid by the guardians. We are asked to say that the word "attend" is not to be taken in the ordinary sense, but as though it meant "attend with school fees in hand." But I am unable to import those words into this statute—which is a very stringent Act—for they would hardly be in accord with the words actually in the statute. In my opinion, "cause to attend" means simply and purely "send to school." There may be a difficulty in obtaining the fees, but that must be provided for, if necessary, by legislation. I am of opinion that this conviction must be quashed.

Conviction quashed with costs.

Solicitors—H. Montagu, agent for Thomas Wright, Leicester, for appellant; Gedge & Co., agents for Edward Miles, Leicester, for respondent.

(1) 46 Law J. Rep. M.C. 193; Law Rep. 2 Q.B. D. 397.

[IN THE QUEEN'S BENCH DIVISION.]

1881. } SWAN (appellant) v. SANDERS
March 15. } (respondent).

Cruelty — Domestic Animals — Young Parrots — Omission to supply Water — Jurisdiction of Justices — Statute 12 & 13 Vict. c. 92. s. 2.

The appellant, a foreman to a dealer in foreign birds, sent some parrots from L. to D. by railway in a box without water. They were found at H., a station on the route, after ten hours' travelling, suffering, as the respondent alleged, from want of water, which they drank eagerly when offered to them. Upon these facts the magistrate convicted the appellant, under 12 & 13 Vict. c. 92. s. 2, of torturing or causing to be tortured "domestic animals":—Held, that the conviction was bad, on the ground that there was no evidence of cruelty or that the parrots in question were "domestic animals" within the meaning of the statute.

Quære, whether if an offence had been committed such offence would have been a continuing one.

CASE stated by a Metropolitan police magistrate, under 20 & 21 Vict. c. 43.

On the 1st of October, 1880, an information was preferred by the respondent against the appellant, under 12 & 13 Vict. c. 92. s. 2, "for that he on the 10th and 11th days of September, 1880, in the parish of St. Giles, Camberwell, did ill-treat and torture, and cause or procure to be cruelly ill-treated and tortured, certain animals, to wit, six parrots, contrary to the statute."

The appellant was the foreman to one Cross, who is a wholesale dealer in foreign birds, beasts and reptiles, and keeps a menagerie at Liverpool.

On the 10th of September, 1880, the appellant superintended the packing in a wooden box of a case of six young parrots at Liverpool, which were despatched by his direction by the train leaving Liverpool at 11 P.M., consigned to Dover. Some Indian corn was placed in the box in which they were consigned, but no water.

At 9.15 A.M., on the 11th of September, the respondent, an officer of the Society

for the Prevention of Cruelty to Animals, being on the platform of the Herne Hill station, observed the box there, which was waiting to be placed in the Dover train. The respondent observed through a crevice in the top of the box that the birds were perspiring very freely, and the attention of another witness was drawn to the birds by their making a squeaking noise. On water being given to them they drank about two saucerfuls, and with a relish, and did not cry out afterwards but seemed to be quite happy and contented.

Upon the above facts the appellant contended—first, that there was no evidence of cruelty; second, that the birds, being foreign unacclimatised parrots, were not "animals" within the meaning of the statute; and, third, that no offence had been committed within the jurisdiction of the Court.

The magistrate convicted the appellant, being of opinion that the birds were "animals" under the statute, and that the appellant had committed an offence within the jurisdiction of the Court, by cruelly sending birds without water on a journey of several hours.

The question for the opinion of the Court was, whether the appellant was rightly convicted under 12 & 13 Vict. c. 92. s. 2.

H. D. Greene, for the appellant.—This conviction is bad. First, there is no evidence of any cruelty. Cruelty consists in the unnecessary abuse of an animal—*Bridge v. Parsons* (1).—See also *Murphy v. Manning* (2). No evidence was offered of the habits of these birds; and the fact that they drank only amounts to evidence of thirst. Secondly, no evidence was given that these parrots were "domestic animals" within the meaning of 12 & 13 Vict. c. 92. s. 29, as extended by 17 & 18 Vict. c. 60. s. 3 (3). The appellant's employer was a dealer in foreign birds, and the presumption is that these birds were

(1) 3 B. & S. 382; 32 Law J. Rep. M.C. 95.

(2) 46 Law J. Rep. M.C. 211; Law Rep. 2 Ex. D. 311.

(3) By 17 & 18 Vict. c. 60. s. 3, the word "animal," as defined in 12 & 13 Vict. c. 92. s. 29, is to include any domestic animal of any kind or species whatever, and whether a quadruped or not.

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young unacclimatised parrots. Domestic animals are such as live in or near the habitation of man, and are tame as distinguished from wild. Lastly, the offence (if any) was not committed within the magistrate's jurisdiction. If the finding is correct the offence was committed at Liverpool; and 12 & 13 Vict. c. 92. s. 14 provides that the complaint must be heard and determined by the Justice "within whose jurisdiction the offence shall be committed." Neither was the offence a continuing one; otherwise every place *en route* would have jurisdiction, and the appellant might be brought before the Justice of each division.

J. Underhill and Morton Smith, for the respondent. — The questions submitted were facts for the magistrates to determine upon. There was sufficient evidence of cruelty, and there can be no doubt that a parrot may be a "domestic animal" under the statute. As regards the question of jurisdiction the offence was a continuing one all along the transit—*Johnson v. Colam* (4). The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 46. sub-s. 3, also provides that where an offence is committed in respect of any property in or upon any carriage or vehicle whatsoever employed in a journey, the person accused of such offence may be tried by any Court through whose jurisdiction such carriage or vehicle passed in the course of the journey during which such offence was committed.

Greene replied.

GROVE, J.—I think the conviction must be set aside. First of all, I am of opinion that there was no reasonable evidence of cruelty. There was no unnecessary physical abuse of the animals, or, as I should prefer to express it, no ill-usage, negative or positive, by which the animals substantially suffered. The ill-usage alleged is the putting the birds into a place where they could not get water for a considerable period; but there is no reasonable evidence to shew that they did suffer from being put in the month of September in a box, with an opening at the top, but not supplied with water. There is no

evidence that the birds required water during the night at a time like that. Cruelty means something more than mere inconvenience; and it seems to me frivolous to say that birds are never to be kept for ten hours without water, and that there was cruelty committed within the statute because they drank some water with a relish immediately it was offered to them.

Again, I don't think that such parrots as these were can be properly termed "domestic animals" at all. I am far from saying that a parrot may not be a "domestic animal;" but how can birds which, according to the evidence, appear to be young unacclimatised parrots, be "domestic animals"? No evidence was offered on the subject, and the facts, as stated, lead me to quite the opposite conclusion.

As regards the question whether this offence was a continuing one, I am inclined to think that it was, but it is not necessary to decide the point on the present occasion.

LINDLEY, J.—I also think that our judgment must be for the appellant. No doubt the question whether there has been cruelty or not is a question of fact, and I should not be prepared to differ from the magistrate's view had there been any reasonable evidence on which he acted. The other point is of itself sufficient to dispose of this case, for I can see absolutely no evidence to shew that these birds were "domestic animals."

On the question of jurisdiction I am inclined to think that this was not a continuing offence, but I would rather base my judgment on the other points raised by the appellant.

Judgment for appellant.

Solicitors—*Last & Sons*, agents for *Barrell, Rodway & Barrell*, Liverpool, for appellant; *A. Leslie*, for respondent.

(4) 44 Law J. Rep. M.C. 185; Law Rep. 10 Q.B. 644.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { THE DUDLEY GAS COMPANY
March 14. { (appellants) v. WARMING-
TON (respondent).

Gasworks Clauses Acts, 1847 and 1871—10 Vict. c. 15. ss. 38 and 49—34 & 35 Vict. c. 41. ss. 1, 3, 35, 44—*Penalty for not supplying Copy of Accounts—Time when Offence Complete—Effect of Incorporation of Gasworks Clauses Act, 1847, by Company constituted prior to 1871.*

The Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), by section 35 requires the undertakers to fill up and forward to the local authority, by the 25th of March in each year, an annual statement of accounts, made up to the preceding 31st of December, in a certain form, and to keep copies of such statement, and to sell the same to any applicant. A penalty is imposed in case they make default in complying with the above provisions, and for recovery of penalties complaint is to be made before a Justice within six months after the commission of the offence.

The same Act, in section 1, says that "the Gasworks Clauses Act, 1847, and this Act shall be construed together as one Act; and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act;" and in section 3 that "the provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed."

The appellant gas company by its special Act, passed in 1853, incorporated the Gasworks Clauses Act, 1847, which, by section 49, provides that "nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks."

On the 24th of March, 1880, the respondent made complaint before Justices that the appellants had failed on the 3rd of March, 1880, to sell to him a copy of the annual statement of accounts made up to the 31st of December, 1878.

The company had in fact never made up the accounts in the manner prescribed by the Act of 1871, nor forwarded any statement to the local authority of which a copy could be made :—

Held, on appeal (affirming the conviction by the Justices of the company), first, that the appellants were subject to the provisions of the Act of 1871, which amended not only the Act of 1847 but also every private Act with which the Act of 1847 had been incorporated; and, second, that the complaint was in time.

This was a Case stated by Justices of the borough of Dudley, under 20 & 21 Vict. c. 43.

On the 24th of May, 1880, the appellants appeared to a summons, taken out by the respondent, the town clerk of the borough, charging them that they on the 3rd of March, 1880, unlawfully did not keep and sell to the respondent, who applied for the same at their offices, a copy of the statement of accounts of the said company, made up to the 31st of December, 1878, in the form and containing the particulars specified in schedule B of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), contrary to the form of the said statute.

Upon the hearing the appellants were duly convicted and adjudged to pay a fine of 50l.

The appellant company was incorporated by a special Act, passed in 1853 (16 Vict. c. 2), by section 2 of which Act it was enacted that the Gasworks Clauses Act, 1847, should be incorporated with and form part of that Act.

Section 49 of the Gasworks Clauses Act, 1847, enacts "that nothing herein or in the special Act mentioned shall be deemed to exempt the undertakers from any general Act relating to gasworks, which may be passed in the same session in which the special Act is passed, or any future session of Parliament."

By section 1 of the Gasworks Clauses Act, 1871, it is enacted that "the Gasworks Clauses Act, 1847, and this Act shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act," and section 3 of the same Act states, "The provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed, save where the said provisions are

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expressly varied or excepted by any such special Act."

Section 35 of the Gasworks Clauses Act, 1871, requires the undertakers to fill up and forward to the local authority, on or before the 25th of March in each year, an annual statement of accounts, made up to the 31st day of December then next preceding, in the form specified in schedule B to the Act annexed, and goes on to enact that "the undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding 1s. for each such copy, and that in case of default the undertakers shall be liable to a penalty not exceeding 40s. for each day during which such default continues."

The Gasworks Clauses Act, 1871, s. 44, provides that penalties shall be recovered in manner directed by the Gasworks Clauses Act, 1847, with respect to the recovery of penalties, and that Act incorporates the Railway Clauses Act, 1845, as to the recovery of penalties, section 20 of which requires the complaint to be made before a Justice within six months after the commission of the offence.

The questions of law for the opinion of the Court were—

1. Whether the Gasworks Clauses Act, 1871, applies to the appellants' company so as to require them to keep and furnish the said accounts.
2. Whether the information was laid within the time limited by the statute.

A. Wills (*Anstie* with him), for the appellants.—First, as to the time. If the appellants were within the 1871 Act then they ought to have forwarded the copy of accounts to the local authority. Not having done so the offence was complete, and the six months began to run at once. The essence of the offence is not keeping the accounts in the new form, and not the failure to supply a copy. There must be some limitation, otherwise an application of this sort might be made twenty years after. Secondly, the Gasworks Clauses Acts are not statutes which have any force *proprio motu*. They are merely to save the repetition of certain clauses in each special Act, and they have no operation unless incorporated

with the special Act. The Act of 1871 is not therefore "a general Act relating to gasworks" within the meaning of section 49 of the 1847 Act.

This company is exactly in the same position as it would have been in if the 1847 Act had never been passed, but the special Act had had all the clauses contained in it. Then, if that be so, the 1871 Act has no application, because by section 3 its provisions are only to "apply to every gas undertaking authorised by any special Act *hereafter* passed," and are of future application. Although the 1847 Act is incorporated, yet the 1871 Act does not incorporate every special Act which has incorporated the 1847 Act.

In the case of *The Commercial Gas Company v. Scott* (1) there is a *dictum* of Lush, J., in the course of the argument, which is against my contention, but the judgment is placed on another ground altogether, and the former one is not even mentioned, which rather shews that upon consideration the learned Judges did not think it tenable.

Henry Matthews and *A. T. Lawrence*, for the respondent, were not called upon to argue.

GROVE, J.—I am of opinion that this conviction must be affirmed. Upon reading the case and before hearing the ingenious argument of Mr. Wills, it certainly struck me as quite clear, and, notwithstanding the contention on the part of the appellants, I have no doubt as to what our judgment should be.

The main provisions which we have to consider are the 35th section of the Gasworks Clauses Act, 1871, and the 49th section of the Gasworks Clauses Act, 1847. The Act of 1847 is incorporated with the special Act of 1853, by which the appellants' company was constituted. In the Act of 1871 occurs this provision, under which the conviction has been made. [The learned Judge then read section 35.] The company had not, in fact, kept copies, and has not made up the accounts in the way there directed; but what is contended on their behalf is, that their liability is in respect of the latter offence,

(1) 44 Law J. Rep. Q.B. 215; Law Rep. 10 Q.B. 400.

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and that they must be proceeded against, if at all, for not filling up and forwarding to the local authority the annual statement of accounts, and that they are exempt from penalties in respect of not giving copies of that which they have never made. It seems, however, to me, that they are not to escape by disabling themselves from compliance with the Act, and so take advantage of their own wrong. They have to do two things—make an annual statement and keep copies; and the fact of not keeping a proper account does not exempt them from liability to supply copies.

A more material question is, what effect the incorporation of the 1847 Act with the 1871 Act has upon the provisions of the 3rd section of the latter Act, which makes it applicable to every gas undertaking authorised by any special Act hereafter passed. If read alone, those words would seem to limit the application to gas companies constituted after 1871; but there are no words of exclusion—as if, for instance, the section had run, “shall apply *only* to;” and the reason is, that in section 1 we find that “the Gasworks Clauses Act, 1847, and this Act shall be construed together as one Act,” so that its application to all existing gas companies was already provided for. Thus we arrive at an answer to the question, What is “this Act” in section 3?—namely, that it is the Act of 1871, with all the unrepealed portions of the 1847 Act.

Now, one of the unrepealed portions of the 1847 Act is section 49, which says that nothing in it or in the special Act shall be deemed to exempt the undertakers from any general Act relating to gasworks.

Upon this it is said that the 1871 Act is not a general Act; but it is so in terms, and it relates to gasworks; and if so, section 49 applies, and the undertakers are not exempt from its provisions, but expressly included in them, and the appellants are subject to section 35, upon which this conviction was obtained. Our attention has been called to *The Commercial Gas Company v. Scott* (1), in which the decision ultimately turned on an intermediate Act of 1860, and it became un-

necessary to decide the point now before us; but Mr. Justice Lush, in the course of the argument, says, “Surely, by section 1 of the 1871 Act the Act of 1847 stands amended not only in the statute-book, but in every private Act in which it has been incorporated.”

Without laying too much stress on *obiter dicta*, this shews that the learned Judges did not exclude from their consideration a decision on the very grounds on which we are now deciding, and it is important as shewing their primary view of the Act of 1871.

LINDLEY, J.—I am of the same opinion. We have to construe three Acts of Parliament. The first in point of date is that of 1847, which in section 1 is declared to “extend only to such gasworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith.”

The appellants’ company, by their special Act in 1853, did incorporate it, and make it a part of their Act. Two sections of it only become important now—section 38 (relating to the mode of keeping accounts) and section 49. Now, I read the last-mentioned section as subjecting the appellants to all subsequent general legislation relating to gasworks, unless in terms excepted. Next we come to the Act of 1871 itself, which starts, in section 1, with language which I will read—“The Gasworks Clauses Act, 1847, and this Act shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act.” Passing on, we come to section 35, which is not inconsistent with anything in the special Act or any Act. Why should it not, then, be read as part of the statutory provisions applicable to the appellants? It is contended that the Act of 1871 does not fall within the words “general Act” in section 49 of the 1847 Act; but as by section 1 the Act is made applicable to all gas companies which have incorporated the Act of 1847, I see no way out of that at all, for the appellants have incorporated that Act, and must now be taken to have incorporated it as amended. Besides

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this application, it applies also to all gas companies hereafter constituted, whether they incorporate it in their special Act or not. There may, indeed, be a third class, namely, companies which did not incorporate the 1847 Act, and to such it would not apply. The construction of the statutes is plain, when their course and intention is once seen and understood.

On the first point I have a little doubt, but I am not disposed to differ from my brother Grove.

Conviction affirmed.

Solicitors—F. Needham, agent for Bourne & Owen, Dudley, for appellants; G. S. Warmington, agent for E. M. Warmington, Dudley, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { THE QUEEN (on prosecution of
March 18. { EDWARD WESTON) v. THE
JUSTICES OF SALOP.

Sessions—Right of Appeal—Notice of Appeal—Time—Statutes 11 Geo. 2. c. 19. s. 5, and 12 & 13 Vict. c. 45. s. 1—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 31 and 32—Practice—Regulations and Conditions of Appeal.

By 11 Geo. 2. c. 19. s. 5 an appeal is given in general terms against a Justices' order made under that Act to the next general or quarter sessions.

By 12 & 13 Vict. c. 45. s. 1, in all appeals to the sessions fourteen clear days' notice of appeal must be given. The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), by section 32 enacts that a person authorised by any past Act to appeal, may appeal subject to the conditions and regulations contained in the former Act, one of which is that notice and grounds of appeal must be given within seven days after the Justices' decision where no time is prescribed; "provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorising the appeal, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act."

W. appealed from an order made under

11 Geo. 2. c. 19, and complied with the requirements of 12 & 13 Vict. c. 45. s. 1, but did not give notice of his intention to appeal within seven days of the Justices' decision, or otherwise observe the procedure contained in the Summary Jurisdiction Act, 1879:—

Held, that the provisions contained in the last-mentioned statute applied, and that inasmuch as notice of appeal had not been given in proper time the sessions had no jurisdiction to hear such appeal.

Per LINDLEY, J.—The requirements of 12 & 13 Vict. c. 45. s. 1 as to notice of appeal are consistent with the provisions contained in the Summary Jurisdiction Act, 1879.

In this case a rule *nisi* had been granted for a writ of *mandamus* directed to the Justices of the county of Salop commanding them to enter continuances and hear an appeal brought by Edward Weston against an order of Justices at petty sessions.

The material facts were as follows: On the 19th of October, 1880, a summons was heard before Humphrey Sandford, Esq., and the Rev. L. J. Lee, Justices for the county of Salop, on a complaint made by Joshua Hughes, agent for Major-General Charles Vanburgh Jenkins, that Weston had assisted one Evans, a tenant of General Jenkins, in removing divers goods and chattels from the premises which he occupied as tenant to General Jenkins, by concealing goods, or part thereof. The Justices made an order adjudging that Weston should forthwith pay to the complainant the sum of 24*l.* for his offence of concealing goods unlawfully and fraudulently removed to avoid distress for rent and costs.

A few days subsequently the said order was served upon Weston.

On the 2nd of November, 1880, the money was paid by Weston.

Notice of appeal was subsequently given, which complied with the requirements of 12 & 13 Vict. c. 45.

The next general quarter sessions held after the 19th of October, 1880, were held on the 3rd of January, 1881.

On the 18th of December, 1880, notice of appeal was given to the said Justices

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and the landlord, and on the 28th of December, 1880, recognisances were duly entered into to try the appeal. On the 4th of January, 1881, the appeal, having been duly entered, came on to be heard at the sessions, but the sessions declined to hear it on the ground that notice of appeal was not given within the time specified in the Summary Jurisdiction Act, 1879.

McClymont shewed cause against the rule.—The sessions were right in declining to hear this appeal. The proceedings were commenced under 11 Geo. 2. c. 19, and the order of the Justices was made under section 4 of that statute. By section 5 an appeal is given against a Justices' order to the next "general or quarter sessions"; and the 6th section provides for a recognisance with one or two sufficient sureties, in which event pending the appeal the order of the Justices is not to be executed. By 12 & 13 Vict. c. 45. s. 1, in appeals to the sessions "fourteen clear days' notice of appeal at least shall be given, and such shall be sufficient notice, any Act or Acts or any rule or practice of any Court or Courts to the contrary notwithstanding." It is admitted that all the requirements of these two statutes have been complied with; and the only question is, whether the provisions contained in 12 & 13 Vict. c. 45, in so far as they affect an appeal under an Act which simply authorises an appeal without anything further, have been modified or repealed by the Summary Jurisdiction Act, 1879. If the provisions contained in the last-mentioned statute are held to be applicable to the present case it will not be disputed that this appeal was out of time, the notice of appeal not having been given within the time prescribed. By the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31, persons authorised "by this Act or by any future Act" to appeal from summary orders must, *inter alia*, do so "within the prescribed time; or if no time is prescribed, within seven days after the decision of the Court was given," &c. And by section 32, "where a person is authorised by any past Act to appeal, . . . he may appeal, . . . subject

to the conditions and regulations contained in this Act, . . . provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorising the appeal . . . such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act." If the provisions of this statute are in any way inconsistent with those contained in 12 & 13 Vict. c. 45, then the second Act must be taken to have repealed the first—*Garnett v. Bradley* (1). The object of the Act of 1879 was to give a uniform method of procedure in appeals; and its provisions are applicable to the present case inasmuch as 11 Geo. 2. c. 19 lays down no "conditions or regulations." The sessions therefore rightly declined to hear the appeal.

Kemp (Redman with him) supported the rule.—The Summary Jurisdiction Act was never intended to apply to a case like the present, where an appeal is authorised in a particular way. The statute under which the appeal is given requires the appellant to enter into a recognisance with condition to appear at the sessions. The conditions imposed by 12 & 13 Vict. c. 45 have admittedly been complied with, and the Legislature intended when the Act of 1879 was passed to reserve to the parties their rights under all past Acts.

GROVE, J.—I think that Mr. McClymont's contention is right. The order was made under 11 Geo. 2. c. 19; and under the 5th section an appeal from such order is given to the next general quarter sessions. No conditions of any description are attached to the appeal. Then comes the 6th section, which provides that where the party appealing shall enter into a recognisance as therein mentioned, execution shall be stayed pending the hearing of the appeal. In other words, the appellant must give security for costs in order to have execution stayed. The entering into a recognisance is not, however, any condition attached to the appeal; but such appeal

(1) 48 Law J. Rep. Exch. 186; Law Rep. 3 App. Cas. 944.

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is of right. Then comes 12 & 13 Vict. c. 45, under which fourteen days' notice of appeal must be given in all cases.

Such was the state of the law at the time of the passing of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), which deals with various matters, and which in the 31st section prescribes conditions and regulations which admittedly have not been complied with. These conditions, if inconsistent with that contained in 12 & 13 Vict. c. 45, repeal the latter in so far as they are inconsistent with them. Then comes the 32nd section, which is applicable to the present case, and which provides that "where a person is authorised by any past Act to appeal from the conviction or order of a Court of summary jurisdiction to a Court of general or quarter sessions, he may appeal to such Court subject to the conditions and regulations contained in this Act with respect to an appeal to a Court of general or quarter sessions." These conditions and regulations are contained in the 31st section, to which I have already alluded, and have not been observed by the appellant. But then there is a proviso to the 32nd section, upon the construction of which the present question turns. It runs thus: "Provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorising the appeal, so far as the same is unrepealed, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act." Now this appeal cannot be said to be "in accordance with the conditions and regulations prescribed by the Act authorising the appeal," because the Act 11 Geo. 2. c. 19 attaches no condition; therefore the provisions of the Summary Jurisdiction Act, 1879, apply, and the appellant, not having given his notice of appeal in proper time, had no *locus standi* at the sessions. On these grounds I think the Justices were quite right, and that, therefore, the rule must be discharged.

LINDLEY, J.—I agree. Mr. Kemp's argument is gone if the words of the statute are carefully looked at. Two classes of cases are dealt with—the one

where a right of appeal is given simply, the other where certain conditions are attached to such right. This case comes within the former of the two classes. We are therefore thrown back on the provisions of the 31st section by force of the words contained in the 32nd section. When once this is done, it is admitted that the appellant cannot succeed. As to whether 12 & 13 Vict. c. 45 is repealed, I will only say that, so far as regards the present question, I can see no inconsistency between the two statutes. The one says that notice of appeal must be given within a certain time after the decision of the Justices; the other, that such notice must be given fourteen days before the sessions at which the appeal is to be tried.

Rule discharged.

Solicitors—Shaen, Roscoe & Co., for prosecutor;
Horne, Hunter & Co., agents for Charles Nutsey, Shrewsbury, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { HOLLINGBOURNE UNION (*appellants*)
March 25. { *v.* WEST HAM UNION (*respondents*).

Poor—Settlement—Children under Sixteen—39 & 40 Vict. c. 61. s. 35.

Under 39 & 40 Vict. c. 61. s. 35, legitimate children under the age of sixteen follow their widowed mother's settlement derived from her husband.

CASE stated at the quarter sessions for Essex, in an appeal from an order of Justices, dated the 2nd of July, 1879, for the removal of Sarah Thorndycraft and her four children from the West Ham Union to the Hollingbourne Union.

John Thorndycraft the elder was born in 1804, in the parish of Sutton Valence in the appellants' union. His son, John Thorndycraft the younger, was born in 1835 in that parish.

John Thorndycraft the younger married the pauper Sarah in the parish of Hackney in 1866. Their four children, aged at the date of the order twelve, eight, five

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and four respectively, were born out of the appellants' union.

John Thorndycraft the younger died on the 13th of July, 1875, neither he nor his father having acquired a settlement of his own right.

It was admitted that Sarah Thorndycraft was legally settled in the parish of Sutton Valence in the Hollingbourne Union, but the question for the Court was, whether her children followed her settlement.

Philbrick (Woollett with him), for the respondents.—The question turns on 39 & 40 Vict. c. 61. s. 35, which is as follows: "No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another."

"An illegitimate child shall retain the settlement of its mother until such child acquires another settlement."

"If any child in this section mentioned shall not have acquired a settlement for itself, or, being a female, shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born."

These children, being under sixteen, come within the exception in the first paragraph of the section, and follow their mother's settlement which she derives from her husband. The third paragraph of the section does not apply to cases in which mother and children of tender age would be separated, but only to such cases as *The Woodstock Union v. St. Pancras* (1). They also cited *Westbury-on-Severn v. Barrow-in-Furness* (2).

Kingsford, for the appellants, relied on the third paragraph of the section. The

children in question were children "in the section mentioned"—that is, children "under the age of sixteen"—and it cannot be shewn what settlement they derived from the parent without enquiring into the derivative settlement of such parent—that is, the settlement derived from her husband. They, therefore, are "deemed to be settled in the parish in which they were born"—that is, outside the appellants' union. The section only gives the settlement of the parent to the child when the parent's settlement was acquired, not derived. He cited *The Manchester Overseers v. St. Pancras* (3).

LINDLEY, J.—I am of opinion that the decision of the Justices was correct. The section, after the clause abolishing derivative settlements generally, is divisible into three parts. The first part, so far as it relates to children, applies to legitimate children under sixteen with a father or widowed mother. They are to take the settlement of the father or the widowed mother. The second part applies to illegitimate children only. The third part applies to "any child in this section mentioned;" and in *The Manchester Overseers v. St. Pancras* (3) those words are held to include legitimate and illegitimate children. The present case falls within the first part of the section, the children being legitimate children and having a widowed mother. I find nothing in the third part of the section taking away the settlement given to the child with a parent or a widowed mother.

MATHEW, J.—I am of the same opinion. I think the contention on the part of the appellants would increase the mischief intended to be prevented by the section.

Judgment for the respondents.

Solicitors—Kingsford & Dorman, for appellants;
F. E. Hilleary, for respondents.

(1) 48 Law J. Rep. M.C. 1.

(2) 47 *ibid.* 79.

(3) Law Rep. 4 Q.B. D. 409.

[CROWN CASE RESERVED.]

1880. } THE QUEEN v. MICHELL.*
Dec. 4. }

Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 11, sub-s. 1—Misdemeanour—Full and true Disclosure by Bankrupt of all his Property—Limit of Time to which the Disclosure relates.

By the Debtors Act, 1869, s. 11, sub-s. 1, it is enacted that a bankrupt shall be guilty of a misdemeanour "if he does not to the best of his knowledge and belief fully and truly discover to the trustee of his estate all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, &c.":—Held, that such disclosure was not restricted to property in possession of the bankrupt at the commencement of his bankruptcy.

CASE reserved by Sir W. T. Charley, Q.C., Common Serjeant of the City of London.

The defendant was tried on an indictment under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 11, sub-ss. 1, 12, 14, 15, and s. 13, sub-s. 1, and also under ss. 88 and 89 of the Larceny Act, 1861 (24 & 25 Vict. c. 96).

The indictment contained thirty-eight counts, and the defendant was convicted upon all the counts except the 2nd, 6th, 7th, 8th, 21st and 38th.

The question reserved for the opinion of the Court was in the following terms:—

If the Court should be of opinion that there was no evidence to go to the jury on any of the counts of the indictment (except evidence which was objected to by the defendant's counsel, and which the learned Common Serjeant was wrong in admitting), the conviction is to be quashed.

The first count of the indictment charged that the defendant "was on the 1st of May, 1879, adjudicated a bankrupt in the London Court of Bankruptcy upon the petition of Robert Hyde and others—trading together under the style

* *Coram* Lord Coleridge, C.J.; Field, J.; Lopes, J.; Stephen, J.; and Williams, J.

of Robert Hyde & Co. (Lim.)—duly filed in the said Court on the 1st of April, 1879, and that on the 21st of May, 1879, Edward Pryor Everett was duly appointed the trustee to administer the estate for the benefit of his creditors, and that afterwards—to wit, on the 21st of May, 1879, and from that day up to the day of taking that inquisition—the prisoner unlawfully, and with intent to defraud, did not to the best of his knowledge and belief fully and truly discover to the said Edward Pryor Everett, and then being such trustee, how and to whom and for what consideration and when he had disposed of a certain part of his personal property—to wit, goods of the value of 4,000*l.*, and 4,000*l.* in money—the same not having been disposed of in the ordinary way of his trade, nor laid out in the ordinary expenses of his family."

The principal evidence upon which the defendant was convicted on the first count related to goods bought by him between the months of January and July, 1878, from a person named Keighley, and almost immediately afterwards resold by him at a loss to a person named Harefeld.

The defendant's counsel at the trial submitted that there was no evidence to go to the jury in support of the first count, and insisted that the sub-section on which the first count was founded only required the bankrupt to disclose his dealings in relation to property which he had under his control at the time of the act of bankruptcy (28th of January, 1879), and to which his trustee was entitled and which was divisible among his creditors, and that, therefore, the evidence as to the prisoner's purchases from Keighley and resales to Harefeld at a loss between the months of January and July, 1878, had no bearing on the offence charged in the first count.

The counsel for the prosecution, on the other hand, contended that as the latter part of sub-section 1 requires a disclosure to be made of property which the defendant has disposed of, and omits the words "in his custody or under his control," which limit the meaning of the word "property" in sub-section 2, the "property" referred to in the latter part

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of sub-section 1 must have a wider meaning than that assigned to it by the defendant's counsel, and must include property to which the trustee would have been entitled, and which would have been divisible among the creditors, if the defendant had not put it out of the trustees' reach by disposing of it, and that therefore the defendant was bound to disclose his transactions in 1878.

It is unnecessary to set out the evidence in detail, as the Court were clearly of opinion that it warranted the conviction if it was properly receivable under the first count.

[LORD COLERIDGE.—We will hear what the defendant's counsel has to say as regards the first count of the indictment, because if the Court should be against him on any one count of the indictment on which the jury have found the defendant guilty, the conviction will stand.]

W. H. Olay (*Lyon* with him), for the defendant.—The evidence was not properly receivable upon the first count of the indictment. That is framed upon sub-section 1 of section 11 of the Debtors Act, 1869 (32 & 33 Vict. c. 62). The words "all his property" in that sub-section are restricted to his property at the time of the bankruptcy. By section 3 of 32 & 33 Vict. c. 62, "words and expressions defined or explained in the Bankruptcy Act, 1869, are to have the same meaning in the Debtors Act, 1869;" and by section 15 of the Bankruptcy Act, 1869, the words "property divisible among the creditors are to comprise all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him during its continuance." *The Queen v. Bolus* (1), which is relied on by the prosecution, is not an authority, because the Recorder of Birmingham merely expressed an opinion, in summing up the case, that sub-section 1 "provided that a person seeking to be discharged of his debts should make a full and free disclosure of his transactions for a considerable time immediately preceding his bankruptcy."

(1) 11 Cox, C.C. 610.

Grain (*Avory* with him) was not called upon to argue.

LORD COLERIDGE, C.J.—I am of opinion that the conviction should be affirmed. The contention for the defendant is that the disclosure under sub-section 1 of section 11 of the Debtors Act, 1869, is to be restricted to property which the bankrupt had at the time of his bankruptcy, because section 3 of that Act declares that "words and expressions defined or explained in the Bankruptcy Act, 1869, shall have the same meaning in this Act;" and because the Bankruptcy Act, 1869, declares that the words "property divisible among the creditors" shall comprise "all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him during its continuance." I am of opinion that there is no ground for such a construction. The object of section 11 of the Debtors Act, 1869, was to create several offences, in all of which there had been a fraud or injury to creditors, and in some of which the fraud must have taken place within the period of four months next before the bankruptcy; and if the whole section is looked at, it will be found to contain a most complete and absolute scheme for the discovery of the bankrupt's property. It seems to me perfectly plain that sub-section 1 of section 11 must relate to property other than what the bankrupt has at the time of his bankruptcy. It was said that if that was its meaning, a bankrupt might come within it, if he did not disclose something relating to his dealings with property that he may have had within five years before his bankruptcy. If there was nothing fraudulent in such dealings, it does not fall within the sub-section; but if the question of fraud arises, there is no reason why it should not be enquired into.

FIELD, J., and LOPES, J., concurred.

STEPHEN, J.—I am of the same opinion. It is obvious that the definition of the word "property" in section 15 of the Bankruptcy Act, 1869, only applies to the definition of the words "property divisible among the creditors," and that it was

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not intended that that definition should apply wherever the word "property" occurs in the Acts, for in section 4 of the Debtors Act, 1869, there is a definition of the word "property," which is to be taken in the widest sense of that word.

WILLIAMS, J., concurred.

Conviction affirmed.

Solicitors—Plunkett & Leader, for prosecution;
G. J. & P. Vanderpump, for defendant.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { DYSON v. THE LONDON AND
March 28, 29. { NORTH WESTERN RAIL-
WAY COMPANY.

Railway Company—By-law, divisibility of—Passenger travelling in a First-class Carriage with Second-class Ticket—Intention to Defraud—8 Vict. c. 20. ss. 103, 108, 109.

The 8 Vict. c. 20. s. 103 enacts that if any person travel in any carriage of the company without having previously paid his fare and with intent to avoid payment thereof, . . . he shall for such offence forfeit 40s. By sections 108 and 109 power is given to a company to make by-laws for regulating, inter alia, "the travelling upon or using and working of the railway," provided such by-laws be not repugnant to the provisions of the Act.

By a by-law under the above Act, "Any person travelling, without the special permission of some duly authorised servant of the company, in a carriage or by a train of a superior class to that for which his ticket was issued is hereby subject to a penalty not exceeding 40s., and shall in addition be liable to pay his fare, according to the class of carriage in which he is travelling, from the station where the train originally started, unless he shews that he had no intention to defraud."

The appellant was convicted in a penalty of 10s. under this by-law for travelling in a first-class carriage with a second-class ticket, and it was found as a fact that he did so with the intention of defrauding the company:—

Held, first, that the by-law taken as a whole was void, on the ground that the

penalty imposed by the latter part was unreasonable—Saunders v. The South Eastern Railway Company (49 Law J. Rep. Q.B. 61). Secondly, that the by-law was divisible, but that the conviction could not be upheld, for that the first part of the by-law, which alone was applicable to the case, omitted the intention to defraud required by 8 Vict. c. 20. s. 103 to constitute the offence. It was therefore repugnant to the statute and invalid.

SPECIAL CASE stated by Justices under 20 & 21 Vict. c. 43.

The appellant was charged before the Justices in petty sessions, for that on the 29th of September, 1880, at Slaithwaite, in the West Riding of Yorkshire, he did then and there unlawfully and knowingly travel in a carriage of a superior class to that for which his ticket was available, belonging to the respondents, to wit, from Longwood to Marsden, contrary to the by-laws of the said company, and the appellant was convicted in the sum of 10s. and costs.

The information was laid under the 8th by-law of the respondents, which was made in pursuance of the 8 Vict. c. 20. ss. 108 and 109, and certified by the Board of Trade. The by-law, which was duly published, is as follows:—

"Any person travelling, without the special permission of some duly authorised servant of the company, in a carriage or by a train of a superior class to that for which his ticket was issued is hereby subject to a penalty not exceeding 40s., and shall in addition be liable to pay his fare, according to the class of carriage in which he is travelling, from the station where the train originally started, unless he shews that he had no intention to defraud."

The appellant was the holder of a second-class contract ticket between Huddersfield and Marsden, available at the intermediate stations. The due publication of the by-laws under 8 Vict. c. 20. s. 110 and of the short particulars of offences and penalties under section 143 was proved. On the day in question the appellant got into a first-class carriage at Longwood, one of the intermediate stations between Huddersfield and Marsden, and travelled in such first-class carriage to

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Marsden, and then alighted and left the station without having paid or tendered the difference between the first and second-class fares. The difference was not demanded, as the station-master at Marsden did not notice from what class of carriage the appellant alighted, but the necessity for a demand was waived.

It was objected, on the part of the appellant, that the case of *Bentham v. Hoyle* (1) had already decided that the by-law of another company in the same words as the by-law of the respondent company, and made in pursuance of the same Act of Parliament, was *ultra vires*, and that the case could not therefore go on.

It was contended by the respondent company that the Court in *Bentham v. Hoyle* (1) did not actually decide the by-law to be *ultra vires* the company, but that it was so only if it made fraudulent intention immaterial in the case of the penalty, and they further contended that the fraudulent intention was material in the case of the penalty, and that the by-law was therefore good; and further, that the appellant had intended to defraud the respondent company in this case.

The Justices were of opinion that, looking at the by-law as a whole, its main and primary purpose was to prevent persons from travelling on the railway in fraud of the company without having paid the necessary fare, and that the obligation to pay the additional fare from the station where the train originally started was subsidiary only to such primary purpose; and they found as a fact that the appellant intended to defraud the respondent company, and that the case against him was proved, and accordingly inflicted a penalty of 10s. and the costs.

The questions for the Court were, first, whether or not the construction put upon the by-law by the respondents was the correct one; secondly, whether the appellant was rightly convicted.

Dodd, for the appellant.—This by-law has been already discussed in *Bentham v. Hoyle* (1), and the penalty of paying the fare from the station where the train

originally started has been held to be unreasonable—*Watson v. The London, Brighton and South Coast Railway Company* (2). The only difference between the present case and those cases is that in the present case there was an intention to defraud, but the by-law is rendered bad by the unreasonable penalty attached to it. It is not divisible: being bad in part it is altogether bad, and the appellant cannot be convicted under it.

Bosanquet (Moon with him), for the respondents.—By-laws are divisible—*The Queen v. Lundie* (3), and *per Willes, J.*, in *The Queen v. The Saddlers' Company* (4)—and this by-law consists of two parts, divided at the words “forty shillings.” The first part of the by-law, under which the appellant was convicted, is valid, and is untouched by the cases cited by the appellant.

Even if the by-law is bad, the appellant has committed an offence within section 103 of the Railway Clauses Act (5), and the Court may uphold the conviction under that section—see *Shackell v. West* (6).

Dodd, in reply.—The information was laid under the by-law, and not under the statute. If the appellant has committed an offence under the statute, a further summons can be taken out.

Even if the by-law were divisible, the first part would be bad because it conflicts with the statute. Sections 108 and 109 of the Railway Clauses Act empower the company to make by-laws for, amongst other purposes, “regulating the travelling

(2) 47 Law J. Rep. C.P. 634; Law Rep. 3 C.P. D. 429; affirmed, 48 Law J. Rep. C.P. 316; Law Rep. 4 C.P. D. 118.

(3) 31 Law J. Rep. M.C. 157.

(4) 32 *ibid.* Q.B. 337.

(5) Railway Clauses Act (8 Vict. c. 20), s. 103: “If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, and if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings.”

(6) 20 Law J. Rep. M.C. 45.

(1) 47 Law J. Rep. M.C. 51; Law Rep. 3 Q.B. D. 239.

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upon the railway" (7), but those by-laws must not conflict with the Act. Section 103 applies to the class of offence under which the appellant was convicted, but enacts that, in order to constitute the offence, there must be "an intent to avoid payment"—words which are wanting in the first part of this by-law.

LINDLEY, J.—I am of opinion that this conviction cannot be supported. The construction I place upon this by-law is that it is divisible; in its ordinary and natural meaning it would clearly seem to be so. The first part declares that any person travelling without special permission in a carriage or by a train of a superior class to that for which his ticket was issued is to be subject to a penalty not exceeding 40s. That is the first part of the by-law, and I cannot, without straining the language, add to it the words "unless he shews he had no intention to defraud." Those words belong to the latter part of the by-law, and it seems to me they ought to be added to the sentence immediately preceding them, so that the latter part of the by-law would run thus—"Unless he shews he had no intention to defraud, he shall, in addition, be liable to pay his fare from the station where the train originally started." The measure of this penalty has been held to be unreasonable, and consequently, if the by-law were indivisible, it would be bad. But I am disposed to hold it to be divisible; it is in fact two by-laws in one. I will so treat it, and I proceed, therefore, to consider whether the first part is good or bad.

In order to solve this question one must refer to the Act of Parliament from

(7) Section 108: "It shall be lawful for the company from time to time, subject to the provisions and restrictions in this and the special Act contained, to make regulations for the following purposes (that is to say) . . .

"Generally, for regulating the travelling upon, or using and working of the railway."

Section 109: "For better enforcing the observance of all or any of such regulations, it shall be lawful for the company . . . to make by-laws, and from time to time to repeal or alter such by-laws and make others, provided that such by-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act. . . ."

which the power to make these by-laws is derived. The Railway Clauses Act (8 Vict. c. 20), s. 103, deals with the class of offences aimed at by this by-law; but this section imposes a restriction which is omitted from the by-law, namely, "with intent to avoid payment thereof." The defendants have struck out that sentence, and in effect declared that the traveller offending shall in any event be subject to the penalty. Section 109 confers on the railway company the power of making by-laws, but the only power is to make by-laws consistent with the Act. Holding, therefore, the by-law to be divisible, the part which alone is applicable to the present case is inconsistent with the Act, and is therefore bad.

It was contended by the counsel for the respondents that, if the conviction could not be sustained under the by-law, it could be sustained under the Act; but the short answer to that is, that the appellant has been proceeded against under the by-law, and that he has not been proceeded against under the Act. I am therefore of opinion that this conviction must be quashed.

MATHEW, J.—I am of the same opinion, and I agree that this by-law is bad, because the directions in the statute have not been observed. The first part of the by-law has been drawn without reference to the fact that an intention to avoid payment is declared by the Act to be a necessary ingredient; it is, therefore, inconsistent with the Act and bad.

In these matters railway companies ought to be held to a strict adherence to the law; the operation of these by-laws is entrusted to officials of the company over a long line of railway, and may be enforced by them without much consideration for the passengers. I agree that the by-law is divisible in the way pointed out by my brother Lindley, and that the principle of construction applicable is fatal to it. The by-law consists of two parts, both of which are bad.

Conviction quashed.

Solicitors—J. W. Sykes, agent for Ramsden, Sykes & Co., Huddersfield, for appellant; R. F. Roberts, for respondents.

[IN THE COURT OF APPEAL.]

(Appeal from the Queen's Bench Division.)

1881. { HARE (appellant) v. THE
May 23, 24. { CHURCHWARDENS AND
OVERSEERS OF PUTNEY
(respondents).*

Rating — Successive Occupation — Liability of Outgoing Occupier — Bridge acquired by Board of Works — Liability to Rate — Beneficial Occupation — 32 & 33 Vict. c. 41. s. 16—40 & 41 Vict. c. xciv.

A bridge company which was assessed to the rates in Putney transferred its property to the Metropolitan Board of Works under the provisions of an Act which required the board to keep the bridge open for public use free of toll, and which provided that the board should receive an annual contribution from the county of Surrey. At the time when the bridge was thus transferred, a rate to which the company were rated, and in respect of which their names were in the rate book, was not wholly discharged, so that it extended over a period after the occupation of the bridge by the company had ceased:—Held (affirming the judgment of the Queen's Bench Division), that the liability of the bridge company to be assessed to the rate did not cease until there was a succeeding occupier who was liable to be assessed to the rate; that the Metropolitan Board of Works were not so liable, and that the board could not be assessed in respect of their property in the bridge, inasmuch as there was no beneficial occupation of the bridge by them.

Appeal from the judgment of the Queen's Bench Division on a Special Case stated by certain Justices of the county of Surrey. The Special Case was, as far as is material, as follows:—

Upon the hearing of a summons and complaint preferred by the respondents against the appellant, as solicitor to the Fulham (otherwise Putney) Bridge Company, to shew cause why he had not paid the rates hereinafter mentioned, we decided that the said company was liable to pay the whole of the said rates, and not a part only, as was claimed by the appellant, but at the request of the appellant we agreed

* *Coram* Bramwell, L.J.; Brett, L.J.; and Cotton, L.J.

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to state a Case for the opinion of the Court upon the question of law arising out of the following facts:—

By the 12 Geo. 1. c. 36, amended by 1 Geo. 2. c. 18, certain commissioners and trustees were empowered to build a bridge across the river Thames, from the town of Fulham in Middlesex to the town of Putney in Surrey, and in order to defray the charge and expense of erecting and building the said bridge, and repairing, preserving and supporting the same and the ways and passages thereto, from time to time, they were empowered to levy certain tolls which were to be applied for that purpose. By the latter Act the said commissioners were empowered to assign the said tolls in perpetuity, or otherwise, to persons who should undertake to contract and agree to erect and build the bridge, and to preserve and keep up the same in good and sufficient repair, and should give sufficient security so to do. The commissioners accordingly assigned the tolls in perpetuity to subscribers who so undertook, contracted and agreed and gave security as aforesaid. The said subscribers and their successors built and sustained the bridge, and levied tolls for the passage thereover since that time, and applied the same for the purposes aforesaid as by the said Acts provided. By the Thames Navigation Act, 1870, s. 10, the bridge and the lands thereunto belonging, and the tolls, revenues, profits and income belonging to the same, were vested in a committee of management, consisting of six of the shareholders and their successors for the time being, upon trusts as to all but the profits for the general purposes of the bridge, and as to the profits (if any) for the shareholders. This corporation is the Fulham Bridge Company in the schedule to the Metropolis Toll Bridges Act, 1877, referred to.

By the Metropolis Toll Bridges Act, 1877, the Metropolitan Board of Works were empowered to purchase the said bridge. The board accordingly purchased the same and paid the purchase-money in the manner provided by the Act on the 25th of June, 1880, and a receipt therefor was given on the same date. On the 26th of June, 1880, the bridge was thrown

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open to the public free from toll, and possession was taken at the same time by the chairman of the board on behalf of the board. From that date the said lands, tenements and hereditaments became thenceforth transferred to and vested in the Metropolitan Board of Works under the provisions of the Metropolitan Toll Bridges Act, 1877, and the said board have had the absolute control of the said lands, tenements and hereditaments. Since the 26th of June, 1880, the connection of the bridge company with the bridge and its appurtenances has altogether ceased.

Before the 25th of June, 1880, certain rates had been duly made, allowed and demanded in and for the parish of Putney, and were then current, namely, a poor rate, dated the 24th of April, 1880, and a sewers rate, a lighting rate, a general rate and a Metropolitan Consolidated Rate, dated the 1st of May, 1880. All these rates were made for periods extending beyond the 26th of June, 1880, and at that date and since remained undischarged in respect of the Putney bridge.

It was admitted before us by the appellant's counsel that if the respondents had insisted on the payment of the said rates prior to the transfer of the said bridge, the company would at that time have been bound to pay the whole of the said rates as a matter of law.

On behalf of the appellant it was contended that under the above circumstances the bridge company were liable for so much, and no more, of the above rates respectively as is proportionate to the time of their occupation within the periods for which the rates were respectively made, and it was also contended that the Metropolitan Board of Works were in occupation of the bridge.

On behalf of the respondents it was contended that the bridge company being duly rated, the Acts constituting the bridge company are immaterial, that section 16 of 32 & 33 Vict. c. 41 (1) did not

(1) 32 & 33 Vict. c. 41. s. 16: "If the occupier assessed in the rate when made shall cease to occupy before the rate shall have been wholly discharged, or if the hereditaments being unoccupied at the time of the making of the rate become occupied during the period for which the

apply to the present case, as there was no succeeding occupier who could be rated to the rates, the Board of Works having no beneficial occupation of the bridge. The respondents further contended that under the circumstances herein set forth the bridge company were, by the provisions of the Metropolitan Toll Bridges Act, 1877, and especially by sections 15 to 18 (2) bound to pay the said rates. We decided to issue our warrant of distress for the whole of the said rates.

If the Court should be of opinion that our decision was right, then our warrant is to issue accordingly.

If the Court should be of opinion that our decision was wrong, then our warrant is to issue for a proportionate part of the said rates.

The Queen's Bench Division gave judgment in favour of the respondents.

The bridge company appealed.

rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, as the case may be, and the date when such occupation commences, so far as the same shall be known to them, and such occupier shall thenceforth be deemed to have been actually rated from the date so entered by the overseers, and shall be liable to pay so much of the rate as shall be proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made, in like manner and with the like remedy of appeal as if he had been rated when the rate was made; and an outgoing occupier shall remain liable in like manner for so much, and no more, of the rate as is proportionate to the time of his occupation within the period for which the rate was made; and the 12th section of the statute 17 Geo. 2. c. 38 shall be repealed."

(2) 40 & 41 Vict. c. xcix., entitled, "An Act to provide for throwing open for the free use of the public certain toll bridges within the Metropolis," provides that the Metropolitan Board of Works may buy certain bridges, amongst which was included Fulham, otherwise Putney bridge, and by section 16 enacts that when the receipt for the amount of the consideration has been signed, then the undertaking shall "be transferred to and vested in the board, and they shall be entitled to immediate possession, and they shall have absolute control of such undertaking, freed and discharged from all leases, contracts, debts, charges and liabilities whatsoever of the company affecting the same." By section 16 all tolls are to cease on such transfer. By section 18 the company is to continue liable for debts unpaid at the time of transfer. By section 27 the Justices of the peace of the counties of Middlesex and Surrey are each in respect of Putney bridge to pay annually to the board 1,200*l.* out of the rates,

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Charles and Danckwerts, for the appellant.—The bridge company were outgoing occupiers, and they are exonerated by the proviso at the end of section 16 of 32 & 33 Vict. c. 41 (1), for while the first part of that section deals with the liability to be assessed of the incoming tenant, the last part deals with the exoneration of the outgoing tenant, whether there is or is not an incoming tenant. In *Edwards v. Rusholme* (3) there was an interval between the two tenancies, so that case can be distinguished from this. It is true that there was no such interval in *The Overseers of St. Werburgh v. Hutchinson* (4), and it is necessary to ask this Court to overrule that case. The words "like manner," in the latter part of the section, refer to the right of appeal. The entry by the overseers of the name of the new occupier is nowhere made a condition precedent to his liability to assessment (5); and if the Metropolitan Board of Works were liable to be rated, it matters not whether they were actually rated.

Further, the Metropolitan Board of Works are both occupiers, and rateable occupiers: the amount is immaterial. They get an annual payment from the county of Surrey and they have other indirect ways of making profit out of their property in the bridge. It is argued that there is no beneficial occupation, but there is a potentiality of profit, and that suffices—*Jones v. The Mersey Dock and Harbour Board* (6). The public has not a right to the whole of the bridge, so that there are portions of it which may be made sources of profit, and that is a beneficial occupancy which may be made beneficial. No hardship will ensue, for if the bridge is less valuable in the hands of the board than it was in the hands of the company, then the board can appeal and the amount of the assessment will be altered—*Greig v. The University of*

Edinburgh (7) and *The Mayor of London v. Stratton* (8).

Jelf, for the overseers.—The bridge company, as occupiers, are liable. The Act of 32 & 33 Vict. c. 41 (1) proceeds on the same lines as that of 17 Geo. 2. c. 38 and was intended to carry out the recital contained in section 12 of the earlier Act—that is, to prevent parishes from losing rates owing to removals and substitution of tenants. Persons can easily settle their rights *inter se* by arrangement, but the parish is entitled to have the security of an occupier. The Act which transferred the bridge to the Metropolitan Board provided that the undertaking should be transferred free from all liabilities and charges. The bridge company cannot bring themselves within the terms of section 16 (1), for there is no person succeeding to them who can be called an occupier, and there is no beneficial occupation. Moreover, the name of the bridge company is still on the rate book, and no person can be liable to be assessed until his name is placed on the rate book.

It has been decided that sewers in the occupation of the Board of Works are not rateable—*The Queen v. The Metropolitan Board of Works* (9), *The Metropolitan Board of Works v. West Ham* (10). *Flatcher v. Boodle* (11) was also cited.

Charles, in reply.—This bridge is an hereditament; it is not a mere road, it is occupied by the board; there is in the hereditament a capacity of profit. In *The Mayor of Lincoln v. Holmes Common* (12) the order was that the rate be reduced to nothing, so that case does not tell against the appellants.

BRAMWELL, L.J.—I am of opinion that this judgment must be affirmed. I do not think it is possible to speak with great confidence on the construction of

(3) 38 Law J. Rep. M.C. 153; Law Rep. 4 Q.B. 554.

(4) 49 Law J. Rep. M.C. 23; Law Rep. 5 Ex. D. 19.

(5) It was admitted that the name of the appellants remained on the rate book, and that the names of the Metropolitan Board of Works had not been substituted.

(6) 11 H.L. Cas. 443; 35 Law J. Rep. M.C. 1.

(7) Law. Rep. 1 H.L. Sc. Cas. 348.

(8) 45 Law J. Rep. M.C. 22; Law Rep. 7 E. & I. App. 477.

(9) 38 Law J. Rep. M.C. 24; Law Rep. 4 Q.B. 15.

(10) 40 Law J. Rep. M.C. 30; Law Rep. 6 Q.B. 193.

(11) 18 Com. B. Rep. N.S. 152; 34 Law J. Rep. C.P. 77.

(12) 36 Law J. Rep. M.C. 73; Law Rep. 2 Q.B. 482.

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this statute, but it is tolerably clear that it did not intend that, after a rate had been properly made, to which there was some one who was liable, the parish should ever lose any portion of that rate: it was intended that the whole of that rate should be paid by some one. Section 16 of the statute (1) begins: "If the occupier assessed in the rate, when made, shall cease to occupy before the rate shall have been wholly discharged"—that is one condition of things contemplated by the Act—"or if the hereditament, being unoccupied at the time of the making of the rate, become occupied during the period for which the rate is made"—that is another alternative contemplated by the statute—"the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, and" (I omit the next few clauses) "an outgoing occupier shall remain liable in like manner for so much, and no more, of the rate as is proportionate to the time of his occupation within the period for which the rate was made." Now it appears to me that these words contemplate the case of one person going away and of another succeeding him without any interval between them. It appears to me that the statute has two objects in view—one, that the parish should never lose any portion of the rate, and the other that in the case of an hereditament, which was unoccupied at the time of the making of the rate, but which becomes occupied during the period for which the rate is made—in such a case the incoming occupier should be liable for a portion of the rate. The words "an outgoing occupier" cannot be looked at as though there were no other provisions in the section. I think that if the Legislature had intended that the occupier who was assessed should be liable to the rate only during the time of his occupation, there would then have been a provision that if he, having paid the rate, should leave before the time for which the rate was laid had expired, he should get some return, as otherwise a man who paid the rate would be at a disadvantage with one who did not pay the rate. It was not, I think, intended that the parish should ever lose any part of a rate duly made on some person who

at the time of the rate being made was liable to that rate.

The appellant, the solicitor to the Fulham Bridge Company, had ceased to occupy, and the question is, whether any one else has occupied so as to be liable to pay a portion of the rate. There is, in my opinion, no evidence of any such occupation. The Metropolitan Board have not occupied the bridge; the property is certainly in them, and possession to a certain extent follows the property, for they have such a possession that they could maintain an action for trespass; but that does not render them occupiers so as to be rated. Further, there is no beneficial occupation. I doubt whether we ought to entertain the suggestion that the Metropolitan Board might make money by letting out space for advertisements; but even if the Metropolitan Board were to make money in some such way, it does not at all follow that there would be a beneficial occupation. There might also be expenses and nothing might be left for the Metropolitan Board, so that if the property were let to the imaginary tenant from year to year he might very likely give nothing at all. If this were not so, the Metropolitan Board would be assessable in the other cases which have been cited. This disposes of the question; but I may add that I think it is a condition precedent to the exoneration of the outgoing occupier that the name of the person who succeeds him shall be entered in the rate book. At first it appeared strange that the parish should be able to say that the overseers ought to have removed one name and substituted another, but that, as they have not done so, a claim can be maintained for the rate against the former occupier, but if the overseers ought to do so the parish certainly must not lose; and perhaps if the overseers fail in their duty and a ratepayer is injured, he may have his remedy against the overseers.

BRETT, L.J.—In this case a summons was taken out by the overseers of the parish of Putney against the appellant as solicitor to the Fulham or Putney Bridge Company for non-payment of rates. The Justices decided that the bridge company

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was liable to be assessed to the whole of the rate, while the bridge company were willing to pay a part only. The bridge company appealed by obtaining a Special Case to be stated. The Queen's Bench Division, however, affirmed the decision and held that the bridge company were liable to be assessed to the whole rate. The answer of the bridge company to the summons and claim by the parish was that they had ceased to occupy the bridge property, and that is true; and then they further urged that if that answer fails still that the Metropolitan Board of Works have come into possession of the bridge so as to be liable to be assessed for the remaining portion of the rate which they refused to pay.

It is, however, said by the overseers of the parish that the Metropolitan Board of Works never have been rated, even if they are liable to be rated, and that the liability of the bridge company cannot cease until the Metropolitan Board have in fact been rated. It is further said that the Metropolitan Board cannot be rated—first, because they are not occupiers; and secondly, because there is no beneficial occupation by them. It is clear that the Metropolitan Board never were rated, for a person liable to be assessed to a rate is not rated until his name is on the rate book. The question then arises, which it is right that we should consider, and that is, whether the Metropolitan Board could be rated unless their occupation of the bridge was of a particular kind—that is, a beneficial occupation. Now I think that the Metropolitan Board were not occupiers at all; and I say this, on looking at the local and personal Act under which they acquired this property: they are, I think, no more occupiers than the owner of the soil of a street is the occupier of that street after he has dedicated it to the public. The Metropolitan Board can only keep the bridge for the benefit of the public; the public has a right to use the whole of the bridge, and the Metropolitan Board have therefore never been occupiers; and even if they were occupiers in one sense, there has still never been any beneficial occupation by them. The test to be applied is found in the argument of Lord Justice Mellish, when at the bar, in

The Queen v. The Metropolitan Board of Works (9), and it is this, that there is no beneficial occupation if by law no benefit can possibly arise to the occupier; but if no benefit arises merely because of the volition of the occupier, then there is what is called a potentiality of beneficial occupation; if, however, by law no benefit can arise, then from a poor-law point of view there has been no beneficial occupation.

Then it is said that this case resembles the case of *Jones v. The Mersey Docks* (6). The question is whether it resembles most that case or the cases of the main sewers of the Metropolitan Board of Works, which are not liable to be assessed to the rates, and I think that the resemblance is to these latter cases. I am of opinion that, both on the ground that there is no occupation of the bridge by the Metropolitan Board and no beneficial occupation, the Metropolitan Board are not liable to be rated in respect of this bridge. The case then is reduced to this: the bridge company were rateable, and were rated when the rate in question was imposed, they ceased to occupy during the period before the rate was wholly discharged and during the period over which it was made, and they were not succeeded by anybody who was liable to be rated. Can the bridge company then claim to be relieved from a portion of the rate? This must be decided on the construction of section 16 of 32 & 33 Vict. c. 41 (1). This section was passed on the same lines as the earlier Act of Geo. 2, and was passed as much for the protection of the parish as for that of the ratepayer. The effect of it is that the person liable to be assessed to the rate, and also actually rated at the time when the rate is imposed, is liable to be called on to pay the whole rate till some one else is substituted for him, so as to be liable to be assessed to that rate in his place, and until some person has been actually placed on the rate book in his place. The object of this earlier part of the section is that the parish may not lose any part of the rate. The latter part of the section was, I think, drawn in order that when the first person had been put on the rate book the second person might be sub-

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stituted for him, for it prevents the argument being urged that there cannot be two persons on the same rate book at the same time as assessed to the same rate, because there is this proviso, that the second person may be substituted for the person already on the rate book, and that thus the first person may be relieved from his liability to pay the whole of the rate, and may pay a proportion only. If so, the construction of the section is that the person first placed on the rate book remains liable to pay the whole rate until some one is substituted in his place, who is liable to pay a proportion of that rate. The bridge company, therefore, are not relieved until the Metropolitan Board are assessed to the rate in question; but the Metropolitan Board never were so assessed. I do not say whether the bridge company would have a remedy against the overseers if they failed in their duty—that may or may not be so; but this appeal must be dismissed and this judgment affirmed, inasmuch as the Metropolitan Board of Works cannot be assessed to this rate in respect of this property.

COTTON, L.J.—I also think that this judgment must be affirmed. The first question is, what is the true construction of section 16 of 32 & 33 Vict. c. 41 (1). It is not immaterial to consider what would be the position of the bridge company if that Act had not passed, and if there were no similar enactment. If the bridge company had ceased to occupy they would, in the absence of any provisions to the contrary, be liable to pay the whole rate, and they could, it is admitted, be compelled to pay the whole rate the moment it was made. What alteration then does the section under consideration effect in their position? I think that the position of the provision as to the payment of a proportion of the rate is material. That provision comes after that portion of the section which relates to the position of the person who comes in after the time at which the rate is made, and such a person so coming in is only liable after his name has been placed in the rate book. Can it be intended that the person who is assessed in the rate book is to be relieved from liability to pay the rate when no one else is liable? If so, I think that the

provision as to the relief to be given to an outgoing occupier would be found in the earlier part of the section; but it is not so placed, it comes after the provision which renders some one else liable if certain steps have been taken. I did for a time feel that a difficulty was raised by the use of the phrase "an outgoing occupier," instead of "the outgoing occupier," but I do not think that can alter the construction of the section. The words are, that "an outgoing occupier shall be liable in like manner for so much" of the rate. Now these are, *prima facie*, not words of exoneration or relief, they have reference rather to a state of facts caused by some other occupier coming in and being placed on the rate book, and they shew that an outgoing occupier is not relieved from any liability until some one else is put on the rate book.

If it were necessary to decide the point I should incline to say that, until some one was put on the rate book and liable to be assessed to the rate, an outgoing occupier is liable to the whole rate; but, however that may be, I hold that the Metropolitan Board of Works are not capable of being liable to be assessed to this rate for this property. The property which they possess is a portion of the bridge and of the approaches to it, which have been vested in the Metropolitan Board for the purposes of the public; they are the property of the Metropolitan Board only as guardians of the public, and the board do not occupy the bridge save as custodians for the public, and in that sense only are the board owners. There is no beneficial occupation of the bridge; the property is applied to a special purpose and could not be let to anyone for any valuable return; there is no potentiality of beneficial occupation in property of this nature, and therefore there is no liability to assessment. It is, to use an expression of Mr. Justice Lush (13), like a barren rock, for the statute says it must be used for the specified purposes and for no others.

Judgment affirmed.

Solicitors—Hare & Fell, for appellant; W. Reeve, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1881. } THE CHURCHWARDENS OF WOOL-
 April 2. } WICH v. ROBERTSON.

Sea—Bodies cast on Shore—Buried by Parish—Expenses from County—48 Geo. 3. c. 75. ss. 1, 5, 6.

By 48 Geo. 3. c. 75. s. 1, the churchwardens and overseers of the parish in which any dead body "shall be found thrown in or cast on shore from the sea by wreck or otherwise," shall cause the same to be decently interred; and by section 6 a Justice of the peace for the county may order the treasurer for the county to pay such churchwardens and overseers the costs and expenses thereby incurred.

A collision occurred in the river Thames near Woolwich, between the steamships "Princess Alice" and "Bywell Castle," whereby the former ship was sunk and more than 600 people who were on board her were drowned. Many of the bodies were found floating on the water or sunk in the wreck; they were collected in boats, and landed in the parish of Woolwich, and eventually buried by the churchwardens and overseers of the parish. The river Thames at Woolwich where the bodies were found is a tidal navigable river where great ships go, but its mouth, where it joins the sea, is more than thirty miles distant. A magistrate for the county having refused to order the county treasurer to reimburse the churchwardens and overseers the expenses attending the burial,—Held, that the magistrate was justified in refusing, for that the Thames at Woolwich was not the "sea" within the meaning of the Act.

This was a Case stated from quarter sessions upon an appeal from a refusal of the respondent, acting as a Justice of the peace for the county of Kent, to make an order upon the treasurer for the county for the repayment to the appellants of certain costs and expenses incurred, as alleged by them, under the provisions of the statute, 48 Geo. 3. c. 75 (1).

(1) By statute 48 Geo. 3. c. 75. s. 1, it is enacted: "That the churchwardens and overseers of the poor of the respective parishes throughout England, in which any dead human body shall be found thrown in or cast on shore from the sea, by wreck or otherwise, shall, upon notice to them

The facts brought before the Court were set out in the following

SPECIAL CASE.

On the 3rd of September, 1878, a collision occurred in the river Thames, near Woolwich, between the steamship *Princess Alice*, belonging to the London Steamboat Company (Limited), and the steamship *Bywell Castle*, belonging to Messrs. Gray & Co., whereby the *Princess Alice* was sunk and became a wreck, and more than 600 persons, being the passengers by and crew of the *Princess Alice*, lost their lives by drowning. The place where the vessel was sunk was about the middle of the river, below low watermark. The shores of the river at the spot where the vessel sunk are in the parishes of Woolwich and Plumstead in the county of Kent.

given that any such body or bodies are thrown in or cast on shore by the sea, and is or are lying within the bounds of the parish, cause such body or bodies to be decently interred in the churchyard or burial-ground of such parish, so that the expenses attending on such burial do not exceed the sum which at that time is allowed in such parish for the burial of any person or persons buried at the expense of such parish."

Section 3 enacts: "That a reward of 5s. shall be given to anyone finding such body, and giving notice to the churchwardens or overseers of the parish."

Section 5: "All necessary and proper payments, costs, charges and expenses which shall be made or incurred in or about the execution of this Act, shall be made and paid by the churchwardens or overseers of such respective parishes and places."

Section 6: "For the purpose of reimbursing them all such payments, costs, charges and expenses, it shall and may be lawful for any one Justice of the peace for the county or place within England in which any such body or bodies shall have been so removed and buried as aforesaid, by any writing under his hand, to order and direct the treasurer for such county to pay such sum or sums of money to such churchwardens and overseers for their costs and expenses in or about the execution of this Act (after the same shall have been duly verified on oath) as to the said Justice shall seem reasonable and necessary, and such treasurer shall, and he is hereby authorised and required forthwith to pay the sum or sums of money so ordered and directed to be paid to the person or persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts."

Section 7 imposes a penalty on the churchwardens or overseers neglecting to perform the duties required of them by the Act.

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A few of the bodies of the persons drowned were found ashore below Woolwich, on the Essex bank of the river Thames, but no charge has been made by the appellants in respect of these bodies. A few more of the bodies were found ashore on the Kent banks of the river Thames within the boundaries of the parishes of Woolwich, Plumstead and Erith, one of which bodies at least was found ashore within the boundaries of the parish of Woolwich. The remaining number of the bodies of the persons drowned were found floating on the water or sunk in the wrecked vessel.

The bodies mentioned in the preceding paragraph (except such as were previously claimed and removed by relatives) were from time to time received and collected in a steamer or boats, and were afterwards, by the direction of the county coroner for the district, with the consent of the dockyard authorities, landed at the dockyard pier or steps in the parish of Woolwich, and then removed to a temporary deadhouse in the dockyard and parish.

Between 400 and 500 of the bodies were afterwards claimed by relatives or friends and buried by them at their expense, but 120 of such bodies were buried by the churchwardens and overseers of Woolwich (2).

The river Thames at Woolwich and at the respective places where the said bodies mentioned were found ashore or found floating or sunk in the vessel, is a navigable tidal river where great ships go. Its mouth, where it joins the sea, is more than thirty miles distant from the said places, but there is no bridge over the river, either towards the sea or within a distance of ten miles above the spot where the steamer *Princess Alice* sank.

(2) The churchwardens and overseers of Woolwich allege that they have expended the following sums: (a) 270*l.* in the burial of the said 120 bodies. The expenses of burial exceed those allowed in the parish of Woolwich for the burial of persons at the expense of the parish, as a sufficient number of coffins could not be procured at the ordinary parish charge; (b) 752*l.* in the removal of all the bodies from the dockyard pier to the deadhouse; (c) 118*l.* in the reward at the rate of 5*s.* each body to persons who found the said bodies, whether floating or otherwise, and brought the same to the said steamer, boats, pier or steps.

It has been the practice, both as to the parish of Woolwich and also as to the neighbouring parishes of Erith and Greenwich, for a great number of years (up to and including the year in which the said expenses were incurred), for the county treasurer to reimburse the said parishes the amount of expenses, not exceeding those on parish burials, incurred in removing and burying dead bodies cast on shore by the tide in the river Thames, within the bounds of the said respective parishes, but the order for payment being made by the Justices in petty sessions, or often by a single Justice, never came under the notice of the Justices assembled in the Courts of general sessions, and so passed unquestioned.

In the month of October, 1878, application was made on behalf of the appellants to the respondent, being a Justice of the peace acting in and for the county of Kent, to order and direct the treasurer for the county to pay to them the amounts expended by them as above mentioned, which the respondent refused to do, and the appellants thereupon appealed to the quarter sessions.

The question for the opinion of the Court is, whether the respondent should have made an order upon the county treasurer for the payment of the expenses set forth or any or which of them.

Sir H. Giffard and Wilkey Wright, for the appellants.—This is one of those cases the Act 48 Geo. 3. c. 75. s. 1 was intended to meet. The term "sea" usually includes tidal navigable rivers where great ships go, and the part of the Thames where the bodies were found is within the Act. It is said that the dominion of the sovereign "extends not only over open seas, but also over all creeks, arms of the sea, havens, ports and tide rivers as far as the reach of the tide around the coasts of the sea"—*Hall on Seashore*, p. 3, ed. 1875; and at p. x of the appendix is mentioned a decree Paschæ, 8 Car 1, in the Exchequer, in which the title of the bill was laid: "First, that the river of Thames flowed and reflowed; second, that consequently it was an arm of the sea." The jurisdiction of the Court of Admiralty extends up rivers as far as the tide ebbs

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and flows—*The Queen v. Ounningham* (3), *The Queen v. Allen* (4), *The Queen v. Anderson* (5), *Ooke's Inst.* pt. iii. tit. "Deodands," *Hale's Pleas of the Crown*, vol. 2, pp. 15, 16, 17, Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 476. Secondly, assuming this was the sea, the bodies "were found thrown in or cast on shore from the sea by wreck or otherwise," within the meaning of the statute, for otherwise no person would have a right to interfere with a dead body floating in the sea until it was actually cast on shore by some chance current.

Meadows White and Douglas Kingsford, for the respondents.—There is no common law duty on parish officers to bury dead bodies cast on the seashore or found in the parish—*The Queen v. Stewart* (6)—and the obligation to do so was first created by 7 & 8 Vict. c. 101. s. 31. There is a distinction between the sea and an arm of the sea—*Hale, De Jure Maris*. The term "sea" is opposed to rivers—*Richardson's Dict.*; it is only used in 48 Geo. 3. c. 75 in the ordinary sense, and the word "river" is not mentioned, as is the case in statutes where it is intended they shall be included. The statute 13 Rich. 2. c. 5 limited the jurisdiction of the Admiralty to the sea; 15 Rich. 2. c. 3 extended it to death and mayhem in great ships in "the main stream of great rivers below the bridges;" 28 Hen. 8. c. 15, "to havens, rivers, creeks or place where the admiral has power." The 6 & 7 Vict. c. 12 deals with the case of a body found dead in the sea or "any creek, river or navigable canal." A barge found adrift in the river Thames was held not to be a wreck within the meaning of the Merchant Shipping Act, 1854, s. 450—*The Zeta* (7). The foreshore *prima facie* is not in the parish—*The Queen v. Musson* (8), *The Bridgwater Trustees v. Bootle-cum-Linacre* (9), *McOannon v. Sinclair*

(10). If the statute were held to include the present case, those who picked up the bodies might have landed them on the other shore, in another county, and so have put the expense on another county; the statute only applies to cases in which the bodies have been washed up by the sea without human agency.

LINDLEY, J.—I am of opinion that this case is not within the Act 48 Geo. 3. c. 75. s. 1. The preamble shows that the Act was intended as a remedial measure, and if I could see my way fairly to bring the case within the statute I would be glad to do so; but I am unable to come to the conclusion to which we have been invited by the appellants' counsel, and to hold this part of the river to be the sea within the meaning of the Act. The preamble states that "whereas no provision hath been made by the laws now in force for providing suitable interment in churchyards or parochial burying grounds for such dead human bodies as may be cast on shore from the sea by wreck or otherwise;" and to anyone reading that it would appear there was some statute imposing on parishes the duty of burying bodies found on the highway or on other places within their bounds; but this was not the case, for according to *The Queen v. Stewart* (6) there was no such obligation on the parish; the duty was first imposed by 7 & 8 Vict. c. 101. One must, therefore, approach the consideration of 48 Geo. 3. c. 75 with the conviction that at that time there was no obligation on parishes to bury bodies found within their bounds. Such being the state of the law this statute, which does not mention rivers, but mentions the sea, and the sea alone, was passed. The enabling part of the statute enacts that "the overseer of the parish in which any dead body shall be found, thrown in"—a rather ambiguous expression—"or cast on shore from the sea," shall, upon notice, cause the same to be buried. Then follows another section providing that the expenses attending any case within the Act may be reimbursed to the parish by the county. In order therefore to throw the

(3) Bell C.C. 72.

(4) 1 Moo. C.C. 494.

(5) 38 Law J. Rep. M.C. 12; Law Rep. 1 C.C.B. 161.

(6) 12 Ad. & E. 773.

(7) 44 Law J. Rep. Adm. 22; Law Rep. 4 A. & E. 460.

(8) 8 E. & B. 900; 27 Law J. Rep. M.C. 100.

(9) 25 Law J. Rep. Q.B. 41; Law Rep. 2 Q.B. 4.

(10) 2 E. & E. 53; 28 Law J. Rep. M.C. 247.

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expenses on the county the case must be within section 1 of the Act; it has to be shewn that the body was "found thrown in or cast on shore from the sea," and this forces us back to consider what is meant by the sea in this Act. In other Acts the sea is contrasted with rivers. The statute 15 Rich. 2. c. 3, which extends to Admiralty jurisdiction, uses the words "main stream of great rivers, only beneath the bridges of the same rivers nigh unto the sea." The statute 28 Hen. 8. c. 15 mentions havens, rivers, creeks, and I am not aware of any statute in which such terms are not to be found which has been held to include navigable rivers.

The Special Case describes the place where the collision occurred as in the river Thames, near Woolwich, more than thirty miles from the river mouth. It is therefore found as a fact that the spot was not in the sea, but in the river, and in truth it is not the sea. I think the case is within the mischief intended to be provided against by the Act, but the bodies cannot be said to have been cast up by the sea in the ordinary or legal sense. That being so, it becomes unnecessary to give any opinion upon the second and more difficult question raised by the respondents. I therefore express no opinion on the second point, but uphold the decision of the magistrates on the first point.

MATHEW, J.—We are not called upon to decide as to the statutory obligation of the parish to bury bodies, but only as to their right to be reimbursed the expenses they have incurred in so doing. This depends in the first instance on the meaning of the word "sea" in this statute, 48 Geo. 3. c. 75. s. 1. It has been contended that the word is used so as to include navigable rivers, but I find no indication of this in the Act. The word is used in its ordinary and popular sense, and in that sense the word "sea" is always used as distinguished from "river."

The arguments of the appellants' counsel on the other point would lead to this result, that in the case of a wreck occurring in the open sea anyone who found bodies floating on the water could, in bringing them to land, select the county

on which to throw the expense of burial—a result which seems to indicate that the Legislature had in contemplation only the case of bodies washed up by the tide from the sea.

Appeal dismissed.

Solicitors—E. Hughes, Woolwich, for appellants;
F. Scudamore, Maidstone, for respondent.

[CROWN CASE RESERVED.]

1881. }
May 21. } THE QUEEN v. HARPER.*

Forgery—Inchoate Instrument—Bill of Exchange.

The prisoner purchased goods upon the terms that he should give to the vendors his acceptance for the price, indorsed by a solvent third party. The vendors sent to him, for such acceptance and indorsement, a document in the form of a bill of exchange, but without any drawer's name thereon. The prisoner returned this document accepted by himself, and with what purported to be an indorsement by a solvent third party. This indorsement had been forged by the prisoner. No drawer's name was ever placed upon the document:—Held, that the prisoner could not be convicted of feloniously forging or feloniously uttering an indorsement on a bill of exchange, because the document was not a bill of exchange, as it bore no drawer's name. (By STEPHEN, J.), that the prisoner might have been convicted of a forgery at common law.

CASE reserved by Stephen, J.

John Harper was convicted of forgery under the following circumstances: Messrs. Watson & Son, of Kilmarnock, having supplied Harper with some machinery, drew a bill upon him for the price, and forwarded it to him for acceptance, unsigned by the drawers. It had been arranged that Harper should procure the indorsement of a solvent person and should himself accept the bill. Harper returned it accepted by himself

* *Coram* Lord Coleridge, O.J.; Grove, J.; Hawkins, J.; Lopes, J.; and Stephen, J.

The Queen v. Harper, C.C.R.

and purporting to be indorsed by one Hunt. It was proved that Hunt's indorsement had been forged by Harper. On getting the bill back, Watson & Son indorsed it and paid it into the bank for collection when due. They did not at any time sign it as drawers. The following is a copy of the bill of exchange:—

"Kilmarnock, Nov. 2, 1880.

"£22 10s. 4d.

"One month after date pay to me or order the sum of 22l. 10s. 4d., that being for value received in machinery.

"Indorsed, John Hunt,

"John Watson & Son.

"Mr. J. Harper,

"Contractor and builder,

"Rutland Street, Pallion,

"Sunderland."

Across the bill was written "Accepted, payable at the Union Bank of London. John Harper."

The indictment contained six counts, which charged Harper—

1. With feloniously forging a certain indorsement to and on a bill of exchange.

2. With feloniously forging an indorsement to and on a certain paper writing, which said paper writing is in the form of and purports to be a bill of exchange unsigned by any drawer thereof.

3. Feloniously forging a certain indorsement to and on a certain paper writing.

In the fourth, fifth and sixth counts he was charged with feloniously uttering the documents described in the first, second and third counts.

The learned Judge was of opinion that all the counts were bad except the first and fourth, but he left the whole matter to the jury, who returned a general verdict of guilty.

The question for the opinion of the Court of Criminal Appeal was, whether, under the circumstances stated, Harper was properly convicted of either of the offences charged in the first or fourth counts of the indictment, and whether any of the other counts charged a felony.

No counsel appeared.

LORD COLERIDGE, C.J.—The indictment cannot be supported. There was no

drawer's name to the instrument, and therefore it was not a bill of exchange—it was an inchoate bill of exchange. The point is clear upon principle and also upon authority. It was so decided in the cases of *McOall v. Taylor* (1) and *Stoessiger v. The South Eastern Railway Company* (2).

GROVE, J., HAWKINS, J., and LOPES, J., concurred.

STEPHEN, J.—I entirely agree with the opinion expressed by my Lord, but I wish to add that the prisoner could have been indicted and ought to have been indicted for a forgery at common law.

Conviction quashed.

[CROWN CASE RESERVED.]

1881. } THE QUEEN v. LOVELL.*
March 5. }

Larceny—Taking—Excessive Payment made under Fear.

The prosecutrix gave the prisoner, a travelling grinder, six knives to grind. He ground them, and demanded 5s. 6d. for the work. The prosecutrix refused to pay that amount, on the ground that the charge was excessive. Being threatened by the prisoner, the prosecutrix, in fear, paid the sum demanded. Evidence was given that the trade charge for grinding the six knives was 1s. 3d.:—Held (upon the authority of *The Queen v. Macgrath* (39 Law J. Rep. M.C. 7; Law Rep. 1 C.C.R. 205), that the above facts constituted a larceny, and that it was immaterial that some money was owing from the prosecutrix to the prisoner.

CASE reserved by the learned Chairman of the Worcestershire quarter sessions.

The prisoner was tried before me on an indictment which charged him in the first count with stealing the sum of 5s. 6d., the property of Eliza Grigg; and in the

(1) 34 Law J. Rep. C.P. 365.

(2) 3 E. & B. 549.

* *Coram* Lord Coleridge, C.J.; Lindley, J.; Hawkins, J.; Lopes, J.; and Bowen, J.

The Queen v. Lovell, C.C.R.

second count with demanding with menaces from the said Eliza Grigg the sum of 5s. 6d., with intent to steal the same.

The facts were these: The prisoner was a travelling grinder. He ground two pairs of scissors for the prosecutrix, for which he charged her fourpence. She then handed him six knives to grind. He ground them, and demanded 5s. 6d. for the work. She refused to pay the amount, on the ground that the charge was excessive. The prisoner then assumed a menacing attitude, kneeling on one knee, and threatened prosecutrix, saying, "You had better pay me, or it will be worse for you," and "I will make you pay." The prosecutrix was frightened, and, in consequence of her fears, gave the prisoner the sum demanded. Evidence was given that the trade charge for grinding the six knives would be 1s. 3d.

It was contended for the prisoner that, as some money was due, the question rested simply on a *quantum meruit*, and that there was no larceny or menacing demand with intent to steal.

I overruled the objection, and directed the jury, on the authority of *The Queen v. Macgrath* (1), that if the money was obtained by frightening the owner, the prisoner was guilty of larceny. They found that the money was obtained from the prosecutrix by menaces, and that the prisoner was guilty. I reserved for the consideration of this Court the question whether, upon the facts stated, he was properly convicted.

A. F. Godson appeared for the prosecution.

No counsel appeared for the prisoner.

THE COURT held that *The Queen v. Macgrath* (1) was conclusive, and that the conviction was right.

Conviction affirmed.

Solicitors—Hunt & Son, agents for Miller, Corbett & Co., Kidderminster, for prosecution.

(1) 39 Law J. Rep. M.C. 7; Law Rep. 1 C.C.R. 203.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { COLEMAN (appellant) v. THE
March 5. { CHURCHWARDENS AND OVER-
SEERS OF BIRMINGHAM (re-
spondents).

Poor Law—Maintenance of Grandchild—Coverture—Married Woman having separate Property—Statutes 43 Eliz. c. 2. s. 7 and 33 & 34 Vict. c. 93. ss. 13 and 14.

A married woman is not liable during coverture to contribute towards the maintenance of her grandchildren, notwithstanding that she has separate estate, and is of sufficient ability at her own charges and independently of her husband to support them.

CASE stated by Justices under 20 & 21 Vict. c. 43.

A complaint was preferred by the respondents against the appellant under 59 Geo. 3. c. 12. s. 26 (amending 43 Eliz. c. 2. s. 6) and 4 & 5 Will. 4. c. 76. s. 56, for "that one Margaret Caddick, on the 1st day of August, 1880, and from thence continually afterwards until the time of making this complaint (to wit) on the 6th day of August, 1880, had been, and still was, residing in and actually chargeable to the parish of Birmingham, in the borough of Birmingham, and was likely so to continue, and that the said Margaret Caddick, during all the time aforesaid had been, and still was, a poor and impotent person, and not able to work or maintain herself, and was likely so to continue, and that the said appellant was the grandmother of the said Margaret Caddick, and was of sufficient ability at her own charges to relieve and maintain the said Margaret Caddick."

On the hearing it was proved that Margaret Caddick was duly chargeable to the parish of Birmingham, and that Susannah Coleman was her grandmother, having a separate estate, and of sufficient ability at her own charges and independently of her present husband to maintain and support her grandchild.

It was admitted that Susannah Coleman was at the date the said Margaret Caddick became chargeable, and still was, the wife of John Coleman.

The Justices made an order adjudging

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that the appellant should pay to the respondents each week from the making of that order the sum of 3s. towards the relief and maintenance of Margaret Cad-dick so long as she should be chargeable to the parish, and should continue a poor and impotent person, and not able to work or maintain herself, or until the appellant should be legally directed to the contrary, and also to pay to the respondents the sum of 16s. 6d. for their costs in that behalf (1).

The question for the opinion of the Court was whether the above order was properly made.

F. A. Bosanquet, for the appellant.—A grandmother, though liable under 43 Eliz. c. 2 to maintain her grandchild, is not chargeable so long as she is a *feme covert*—*Custodes v. Jinks* (2). It is true that under 33 & 34 Vict. c. 93, s. 14 a liability is imposed on a married woman having a separate estate to maintain her "children," but this would not include grandchildren—*Maund v. Mason* (3).

He was stopped by the Court.

Dugdale, for the respondents.—A grandmother, even though married, is liable under 43 Eliz. c. 2 for the maintenance of her grandchild, provided she is a person possessed of sufficient ability. The *ratio decidendi* in *Custodes v. Jinks* (2) is that the wife's property had all gone to the husband. Here the appellant has a sepa-

rate estate quite independent of her husband. Then under the Married Women's Property Act (33 & 34 Vict. c. 93), s. 14, a married woman having separate estate is subject to the same liability for the maintenance of her children as a widow, and the word "children" has frequently been held to include grandchildren—see *Radcliffe v. Buckley* (4), *Oxford v. Churchill* (5), and *The King v. Cornish* (6).

[FIELD, J.—The rule as to the construction of wills has not been extended to the construction of statutes, as was pointed out by Blackburn, J., during the argument of *Maund v. Mason* (3). There it was expressly held that the word "children" in 43 Eliz. c. 2, s. 7, did not include "grandchildren."]

At all events the liability under 43 Eliz. c. 2, s. 7 can be enforced as soon as it can be shewn that the married woman has separate property, and the decided cases are based upon the assumption that a woman on whom an order has been endeavoured to be enforced has parted with her ability by her second marriage; and ceasing to be of ability the maintenance of the children could not have been enforced by an order against her—see *Cooper v. Martin* (7). He also cited *Draper v. Glenfield* (8).

Bosanquet replied.

FIELD, J.—I am of opinion that the appellant is entitled to our judgment. The Justices' determination was that the appellant was liable under the circumstances stated in the case, and they accordingly made an order on her for the payment weekly of a certain sum for the relief and maintenance of the pauper. The question we are now called upon to decide is whether this order was rightly made.

Now the facts are shortly as follows: The pauper in question was a child of the age of ten years, and was the grandchild of the appellant, who was a married woman, but had separate property of her own, and was of sufficient ability to maintain the pauper. The question is, whether

(1) By 43 Eliz. c. 2, s. 7, "The father and grandfather, and the mother and grandmother and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person."

By the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 13, "Where, in England, the husband of any woman having separate property becomes chargeable to any union or parish, an order may be made against her by Justices for his maintenance." By section 14, "A married woman having separate property shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children; provided always that nothing in this Act shall relieve her husband from any liability at present imposed upon him by law to maintain her children."

(2) *Styles*, 283.

(3) 43 Law J. Rep. M.C. 62; Law Rep. 9 Q.B. 254.

(4) 10 Ves. 195.

(5) 3 Ves. & B. 59.

(6) 2 B. & Ad. 498.

(7) 4 East, 84.

(8) 3 Bulst. 345.

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under these circumstances the appellant can be legally compelled to maintain the child under the statute of Elizabeth or any other statute. I confess I was, at first, inclined to uphold Mr. Dugdale's contention, but upon consideration I have come to the conclusion that the order must be quashed. Mr. Dugdale argued that inasmuch as the appellant was a grandmother of a child who had become chargeable to the parish, and the Justices have found as a fact that the appellant is of sufficient ability to maintain the pauper, the case is brought within the very words of the statute of Elizabeth. Then the question arises whether the words of the statute included a woman under coverture. Mr. Bosanquet, on behalf of the appellant, strongly relied on the case of *Oustodes v. Jinks* (2), where it was decided that a *feme covert* was not liable. That case has never been reversed or even qualified, and we are now asked to make an order similar to that which was discharged in *Oustodes v. Jinks* (2), on the ground that by section 14 of the Married Women's Property Act (33 & 34 Vict. c. 93) a married woman with separate estate is made liable for the maintenance of her "children"—a term which, it has been argued, includes "grandchildren." There are no doubt cases in which the term "children" have been held to include "grandchildren," but those are cases which have arisen upon the construction of wills, particularly as to the intentions of testators, and are of no assistance in construing this statute. In construing the Married Women's Property Act the intentions of the Legislature must be regarded, having reference to the language which they have used, and I don't think it was ever intended to include "grandchildren" under the terms of section 14 of the Act of 1870. But then it has been argued that the appellant is liable under the statute of Elizabeth, independently of the Act of 1870. I was at first rather taken with this contention; but on the other hand I cannot find that it has ever been so held, and in the only case in which an order was made under like circumstances it was afterwards discharged. The Act of 1870 creates, I think, an entirely new liability—the liability of a married woman having sepa-

rate estate to support her children as if she were a widow—but did not intend to go further. Under those circumstances, I think that this order must be discharged.

MANISTY, J.—I am of the same opinion, and for the same reasons. We have a decision, 200 years ago, to the effect that a woman under coverture is not liable to maintain her grandchildren, and, in the absence of any authority to the contrary, it seems to me that we should be legislating were we to hold that a married woman having separate property was liable for the maintenance of her grandchildren. And it is remarkable that section 13 of the Married Women's Property Act brings, for the first time, a married woman having separate property within the operation of the Poor Law Acts by making her liable for the maintenance of her husband. Then follows section 14, which makes a married woman having separate property liable for the maintenance of children as if she were a widow. That carries us back to the statute of Elizabeth, where we find that the mother and grandmother and the children of every poor person unable to work, being of sufficient ability, shall maintain such poor person; and those words must, I think, be read as if the description were "mother and grandmother not under coverture." I think, therefore, we should be legislating by taking upon ourselves to extend the operation of section 14 of the Act of 1870 to a grandmother.

Judgment for the appellant.

Solicitors—Robinson, Preston & Snow, agents for Rowlands, Bagnall & Co., Birmingham, for appellant; Walter Bowen, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1881. }
May 12. } THE QUEEN v. DUNCAN.

Practice—Indictment for Obstruction of Highway—New Trial—Acquittal of Defendant—Misdirection on Criminal Trial.

Where a defendant has been tried upon an indictment involving the danger to him of imprisonment if found guilty, and has been acquitted, no new trial can be had.

Where a man had been acquitted upon an indictment charging him with having obstructed a public highway, the Court refused to make absolute a rule for a new trial on the ground of misdirection of the Judge, and that the verdict was against the weight of the evidence, holding that he could not be put in peril a second time upon the criminal charge of which the jury had acquitted him.

The Queen v. Scaife (17 Q.B. Rep. 238; 20 Law J. Rep. M.C. 229) not followed.

This was an indictment against the defendant for obstructing a certain highway in the parish of Bentley, in the county of Hants, and a true bill having been found by the grand jury at the quarter sessions, the indictment was removed by *certiorari* into the Queen's Bench and came on for trial at the Winchester Assizes in January, 1881, before Baggallay, L.J., and a special jury.

The jury found that there was once a road, but that the improvements which the defendant had made were not of material damage to the public. Upon this the Lord Justice said it was a verdict of Not guilty, and it was accordingly so entered on the record.

A rule *nisi* for a new trial was granted on the grounds—

1. That the learned Judge improperly admitted evidence to the effect that the defendant altered and improved certain roads and fences, being no part of the road in dispute.

2. That the learned Judge misdirected the jury in telling them that they might take into consideration the alterations and improvements made by the defendant to another road, when they were considering the question whether the road, the

subject of the indictment, was obstructed or materially obstructed.

3. That the verdict was against the weight of the evidence.

Charles (Bullen with him) shewed cause.—It is clear that a new trial cannot be granted on the ground of the verdict being against the weight of the evidence. It was so decided in *The Queen v. Johnson* (1), where there had been an acquittal on the charge of obstructing a highway.

But it is submitted that this being a criminal case, and one in which the verdict of guilty would not simply bind the right, but render the trespasser liable to imprisonment, there cannot be a new trial ordered on the ground of misdirection.

[LORD COLERIDGE, C.J.—In *Tidd's Practice* (p. 911) it is stated that no new trial can be granted, although the acquittal was founded on the misdirection of the Judge.]

In *The Queen v. Russell* (2) Lord Campbell so held on the ground that obstruction of a navigable channel was a criminal offence.

The Court then called on

Collins and *Warry* to support the rule.—First, this was a special verdict, and did not amount to Not guilty.

[LORD COLERIDGE, C.J.—We cannot go behind the entry of the verdict.]

New trials have been ordered in cases of indictment for non-repair of highways, which are criminal proceedings—*The King v. The Inhabitants of the West Riding of Yorkshire* (3); *The Queen v. Leigh* (4).

And in *The Queen v. Chorley* (5), after acquittal on an indictment for obstructing a footway a new trial was ordered. These really are civil questions: by the Act 40 & 41 Vict. c. 14 a defendant may now give evidence.

It seemed to be admitted in *The Queen v. Johnson* (1) that if the Judge mis-

(1) 29 Law J. Rep. M.C. 133.

(2) 23 *ibid.* 173.

(3) 2 East, 353.

(4) 10 Ad. & E. 398.

(5) 12 Q.B. Rep. 515.

The Queen v. Duncan, Q.B.

directed the jury it was ground for a new trial.

[BOWEN, J.—Is there any case where a man has been in peril of imprisonment and been acquitted and a new trial has been ordered?

Charles referred to *The Queen v. Scaife* (6), where a new trial was ordered after conviction for felony, and *The Attorney-General of New South Wales v. Bertrand* (7), explaining that the former decision was *per incuriam*.]

Even without relying on *The Queen v. Scaife* (6) the practice of suspending judgment in cases of misdemeanour to allow of a fresh indictment being preferred was equivalent to granting a new trial.

In *The Queen v. Russell* (2) the judgment of Coleridge, J., was qualified, and does not say that a new trial on the ground of misdirection cannot be granted, only that in that case it ought not to be granted.

LORD COLERIDGE, C.J.—I think that it is perfectly plain that we cannot interfere to order a new trial in this case. It is not a question now of what are the grounds upon which we are asked, as a matter of discretion, to make the rule absolute. It is too late to discuss the reasons for or against the practice, it is enough that it has been settled for centuries that in all cases of a criminal kind in which a defendant has been in danger of imprisonment and has been acquitted no new trial can be had.

The only case in which a new trial was granted was *The Queen v. Scaife* (6), and that was not a misdemeanour but a felony—a distinction which at that time was of the greatest importance—an importance which modern legislation has almost entirely removed. If therefore that case stood uncommented upon and practically unreversed, and had been followed, it would have been an authority strongly in point here. It would, to quote from the judgment in *The Attorney-General of New South Wales v. Bertrand* (7), have worked a revolution in the

practice of the criminal law. But, as Sir John Coleridge there explains, the point now under consideration was not presented to the Court in *The Queen v. Scaife* (6), and the decision cannot be said to be a judgment upon it but a decision given *per incuriam*, afterwards admitted to be wrong. It stands, therefore, that the case has never been followed in these Courts, and has been deliberately overruled in a Court of co-ordinate jurisdiction, in which were two of the Judges who were parties to the original decision.

We are thus without any authority for the course we are asked to take in ordering a new trial, and I am of opinion that we cannot do so. To quote again from the judgment in *The Attorney-General of New South Wales v. Bertrand* (7), "What long usage has gradually established, however first introduced, becomes law, and no Court has jurisdiction to alter it; but, on the other hand, no Court can in the first instance make that to be law which neither the Legislature nor usage has made to be so, however reasonable or expedient or just or in analogy with the existing law it may seem to be."

If the Legislature should choose to allow, under proper safeguards, new trials to be had in felonies or misdemeanours, or both, it can, of course, so enact; but at present we cannot, without authority, order a new trial in the case of a defendant who, after being in danger of imprisonment, has been acquitted.

FIELD, J.—I have arrived at the same conclusion. No case has been or can be produced except *The Queen v. Scaife* (6), and that is open to the observations that have been made upon it by my Lord.

BOWEN, J., concurred.

Rule discharged.

Solicitors—Knight & Ward, for prosecution;
Swann & Co., agents for Foster, Aldershot, for defendant.

(6) 17 Q.B. Rep. 238; 20 Law J. Rep. M.C. 229.

(7) 4 Moore P.C. N.S. 460.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { THE MAYOR, &C., OF ROCH-
March 12, 1861. { DALE v. THE JUSTICES
OF LANCASHIRE.

Highway—Liability to Repair—Main Road—Road ceasing to be a Turnpike Road—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 13.

Under the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 13 (enacting that any road which has, since the 31st of December, 1870, ceased to be a turnpike road, shall be deemed a main road, and half of the expenses incurred after the 29th of September, 1878, by a highway authority in its maintenance shall be borne by the county authority), the corporation of a borough, as its highway authority, claimed from the county authority half of the expenses of maintaining certain portions of roads, which, being formerly parts of turnpike roads, ceased in 1872 to be such through being brought within the borough by a local Act enlarging it, and applying to it as enlarged all enactments relating to the previous area; among which, under an earlier local Act, were sections 47–50 of the Towns Improvement Clauses Act, 1847, making commissioners now represented by the corporation liable for the repair of all highways within that area, and precluding turnpike trustees from collecting tolls or spending money on any road within it:—Held, that the claim was not sustainable, the Act 41 & 42 Vict. c. 77. s. 13 not applying where portions of roads have only ceased to form parts of turnpike trusts incidentally by being merged in another jurisdiction with an express provision as to their repair.

CASE stated by consent. The material facts, together with the enactments upon which the question for the Court turned, appear in the judgment.

Sir H. Giffard (Crump with him), for the plaintiffs (on March 12).

Gorst (Blair with him), for the defendants.

Our. adv. vult.

The judgment of the Court (1) was delivered (on March 16) by

WILLIAMS, J.—The plaintiffs are the highway authority of the Rochdale highway area, and the defendants are the county authority of the county of Lancashire, within which the said area is situated; and the question in this case is, whether the plaintiffs, as such highway authority, are entitled to call upon the county authority, under the 13th section of the Highways and Locomotives (Amendment) Act, 1878, to contribute half of the expenses of maintaining certain portions of certain roads included within the said highway area, by reason of the said portions of roads having been, as it is alleged, disturnpiked within the meaning of the said section.

The inhabitants of the town of Rochdale were incorporated by royal charter in the year 1856, under the title of the mayor, aldermen and burgesses of the town and borough of Rochdale. The "town" at this time included "all places within a radius of three-quarters of a mile from the old market-place." Previously to its incorporation the town of Rochdale had been governed by commissioners under a local Act, and upon its incorporation all the rights, powers, estates and property, and all the liabilities and obligations of the commissioners were transferred to and imposed upon the new corporation. Amongst those rights and liabilities were the following (as stated in paragraph 8 of the Special Case):—

By the Rochdale Improvement Act, 1853, s. 85, the Towns Improvement Clauses Act, 1847, ss. 47, 48, 49 and 50, were (*inter alia*) incorporated therewith. These sections are as follows:—

"Section 47. The management of all the streets which, at the passing of the special Act, are, or which thereafter become, public highways, and the pavements and other materials as well in the footways as carriage ways of such streets, and all buildings, materials, implements and other things provided for the purposes of the said highways by the surveyors of highways or by the

(1) Williams, J., and Mathew, J.

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commissioners, shall belong to the commissioners.

"Section 48. The commissioners, and none other, shall be the surveyors of all highways within the limits of the special Act, and within those limits shall have all such powers and authorities, and be subject to all such liabilities as any surveyors of highways are invested with or subject to by virtue of the laws for the time being in force, and the inhabitants of the district within the said limits shall not, in respect of any lands situate within the said district, be liable to the payment of any highway rate, grand jury cess, or other payment in respect of making and repairing roads within the other parts of the parish, township, barony or place in which the said district or any part thereof is situate.

"Section 49. The commissioners shall be deemed guilty of a misdemeanour for refusing or neglecting to repair any public highway within the limits of the special Act, and shall be liable to be indicted for such misdemeanour in the same manner as the inhabitants thereof, or of any parish, township, or other district therein, were liable before the passing of the special Act.

"Section 50. The trustees of any turnpike road shall not collect any toll on any road within the limits of the special Act, or lay out any money thereon."

Several of the roads entering Rochdale were turnpike roads, and under the above-mentioned sections of the Towns Improvement Clauses Act, such portions of the said turnpike roads as came within the area of the town were taken out of the turnpike trusts, and the obligation to repair the same imposed upon the commissioners and more recently upon the corporation.

This was the state of things down to the year 1872. In that year an Act was passed called the Rochdale Improvement Act, 1872, by which the boundaries of the municipal borough were enlarged and made co-extensive with the boundaries of the Parliamentary borough as specified in the Boundary Act, 1868; and further, by this Act all the provisions of the Acts theretofore in force relating to the "town" were extended to

and became applicable to the enlarged area of the borough.

The effect of this was that the further portions of the said turnpike roads, now for the first time brought within the area of the borough, were taken out of the turnpike trusts by the operation of the Towns Improvement Clauses Act, 1847, and ceased to be turnpike roads; and the question is, whether they have so ceased and have become main roads within the meaning of the 13th section of the Highways and Locomotives (Amendment) Act, 1878, so as to entitle the highway authority of the area in which they are situated to claim from the county authority half of the expenses of their repair.

The section in question is as follows:—

"Section 13. For the purposes of this Act, and subject to its provisions, any road which has, within the period between the thirty-first day of December, one thousand eight hundred and seventy, and the date of the passing of this Act ceased to be a turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road; and one-half of the expenses incurred from and after the twenty-ninth day of September, one thousand eight hundred and seventy-eight, by the highway authority in the maintenance of such road shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority of such area by the county authority of the county in which such road is situate out of the county rate, on the certificate of the surveyor of the county authority, or of such other person or persons as the county authority may appoint, to the effect that such main road has been maintained to his or their satisfaction.

"Provided that no part of such expenses shall be included in

"1. Any precept or warrant for the levying or collection of county rate within the metropolis, subject and without prejudice to any provision to be hereafter made; or

"2. Any order made on the council of any borough having a separate Court

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of quarter sessions under section 117 of the Municipal Corporation Act, 1835.

"The term 'expenses' in this section shall mean the cost of repairs defrayed out of current rates, and shall not include any repayment of principal moneys borrowed, or of interest payable thereon."

The said portions of roads undoubtedly, upon being brought within the area of the borough upon the enlargement of its boundary, were entirely taken out of the turnpike trusts, and ceased to form parts of the turnpike roads; but we think that it cannot be correctly stated that they ceased, within the meaning of this section, to be turnpike roads so as to have become main roads.

We think that the section does not apply to such a case, and that it contemplates only and provides for the case of the cesser or extinguishment and winding up of turnpike trusts, and enacts that in such case the disturnpiked road shall become a main road, for the expenses of repairing which the highway authority, upon whom the obligation would primarily fall, should be entitled to be reimbursed to the extent of one-half by the county authority, and that it does not apply to a case like the present, where the portions of roads in question have only ceased to form part of the turnpike trust incidentally by their absorption by and transfer to another jurisdiction, with an express provision for their maintenance and repair different from that which would have applied to them had they become main roads.

We therefore come to the conclusion that the roads in question are not main roads within the meaning of the statute, but are highways within the borough area the burden of repairing which is thrown exclusively upon the borough authorities.

Judgment for the defendants.

Solicitors—J. J. & C. J. Allen, agents for Z. Mellor, Rochdale, for plaintiffs; Ridsdale, Craddock & Ridsdale, agents for Wilson & Hulton, Preston, for defendants.

[IN THE COURT OF APPEAL.]

(Appeal from the Queen's Bench Division.)

1881. *Ex parte* WHITCHURCH; *in re*
May 20. AN ORDER MADE BY JUSTICES
OF NOTTINGHAM.*

Practice—Appeal—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 91, 94, 95, 96, 251—Appeal from Order of Justices to abate Nuisance—"Criminal cause or matter"—The Judicature Act, 1873, s. 47.

Justices having made an order under section 96 of the Public Health Act, 1875, requiring an owner of property to abate a nuisance, and for that purpose to do certain works, the Queen's Bench Division granted a certiorari to bring up the order for the purpose of quashing it:—Held, that an appeal would not lie from the order of the Queen's Bench Division, because made in a "criminal cause or matter" within section 47 of the Judicature Act, 1875.

Appeal from a judgment of the Queen's Bench Division, reported *Ante*, p. 41.

French, for the respondent.—There is a preliminary objection to the appeal. The order appealed from was made in a "criminal cause or matter" within section 47 of the Judicature Act, 1873, and no appeal lies. Section 91 of the Public Health Act, 1875, defines what shall be deemed to be nuisances, and by section 94 the local authority shall, if satisfied of the existence of a nuisance, "serve a notice on the person by whose act, default or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose." By section 95, if the person on whom the notice has been served makes default in complying with the provisions of it, the local authority shall cause him to be summoned before a Court of summary jurisdiction who shall (by section 96), if satisfied that the alleged nuisance exists, or that, although abated,

* *Coram* Bramwell, L.J.; Brett, L.J.; and Cotton, L.J.

Ex parte Whitchurch; in re An Order made by Justices of Nottingham (App.), Q.B.

it is likely to recur on the same premises, "make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose; or an order prohibiting the recurrence of the nuisance, and directing the execution of any works necessary to prevent the recurrence; or an order both requiring abatement and prohibiting the recurrence of the nuisance;" and "the Court may by their order impose a penalty not exceeding 5*l.* on the person on whom the order is made." By section 251 all offences under the Act, and all penalties directed to be recovered in a summary manner, are to be prosecuted and recoverable under the Summary Jurisdiction Acts. The provisions of Jervis's Act (11 & 12 Vict. c. 43) are therefore applicable, and any person failing to pay the penalty is subject to imprisonment. *Mellor v. Denham* (1) is therefore directly in point.

Philbrick (Biron with him), for the Justices.—*Mellor v. Denham* (1) can be distinguished from the present case, because here section 96 of the Public Health Act, 1875, gives alternative proceedings. The Justices may make any of the alternative orders referred to in the section. The owner cannot have committed any crime until he has disobeyed the notice and the matter has been adjudicated upon under section 96. The Justices may not impose any penalty so as to cause Jervis's Act to apply. If they do not, the matter is a civil one, and it is submitted that a person summoned could be sworn and examined as a witness.

BRAMWELL, L.J.—The difficulty in this case is in applying the word "criminal" to what the person against whom the order of Justices was made has done or omitted to do. Undoubtedly his conduct is not what would in ordinary language be called "criminal." But I cannot see why this is not a "criminal cause or matter" within section 47 of the first Judicature Act. First, I think the case is governed by *Mellor v. Denham* (1). I

(1) 49 Law J. Rep. M.C. 89; Law Rep. 5 Q.B. D. 467.

confess I felt some doubt when we decided that case, but we are bound by and must act upon it; and I do not say that we should decide it differently if the question came before us for the first time now. The Public Health Act, 1875, with respect to nuisances, has not given to any individual any private or particular right, but has given a remedy to be enforced for the benefit of the general public. Where a nuisance exists, and notice is given to the owner to abate it, the statute practically enjoins him to do what the notice tells him to do. The Act in effect, therefore, says to the owner, "You shall do certain things on the happening of certain events."

He disobeys that which the Act, for the common weal and benefit, enjoins him to do. Suppose the Act had stopped there, a person who disobeyed the notice would have been guilty of a common law misdemeanour, and subject to fine and imprisonment at common law. The matter then would be clearly criminal. But the Act goes on to say that, instead of the misdemeanour being subject to fine and imprisonment at the discretion of the Court, his fine shall be limited in amount, and that he shall not be imprisoned if he pays the fine. Why is not that a "criminal cause or matter"? It is impossible to say that it is a civil cause or matter *simpliciter*; and one would be inclined to say that every cause or matter must be either civil or criminal. I am, therefore, of opinion that, independently of authority, this is a criminal cause or matter within the Judicature Act of 1873. As I have said, the difficulty arises from having to apply the words "criminal matter" to this sort of case. But take the case of an indictment for not repairing a highway *ratione tenuræ*. That is clearly a criminal matter, though nobody would, in popular language, call a person a criminal who had been found guilty on such an indictment. Or take the more analogous case of a nuisance at common law. The person convicted may *bona fide* believe he has not committed one, or that what he has done does not amount to a nuisance for which he can be made responsible. He is tried upon a common law indictment, convicted and fined; he is a

Ex parte Whitechurch ; in re An Order made by Justices of Nottingham (App.), Q.B.

criminal. What substantial difference is there between the proceedings in such a case, and in the present? Some of the offences mentioned in the list given in section 91 of the Public Health Act, 1875, are offences at common law, and some are not: a man charged with one of those which would, apart from the statute, be a common law offence, is surely charged with a crime, but he is proceeded against under the section and not at common law. If that is true of the offences enumerated in the statute, which are offences at common law, it is equally true of cases where the proceedings are the same, but which are not the subject of an indictment at common law.

I am, therefore, of opinion that upon reason and authority this is a "criminal cause or matter," and no appeal can be brought.

BRETT, L.J. — I am of opinion that we have no jurisdiction to entertain an appeal, because the Legislature has thought fit to treat the matter as criminal. The Public Health Act, 1875, has enacted that certain things shall be done by owners of property, and has forbidden certain other things, not for the purpose of benefiting any private interest, but for the benefit of the public. For the breach of the enactment the Legislature has provided that the person in default shall be subject to a penalty recoverable summarily before Justices under Jervis's Act, which is made applicable by the Public Health Act. In the result, the Legislature have decided that, with respect to things to be done for the public interest, a penalty shall be imposed, the payment of which, on default, may be enforced by imprisonment under Jervis's Act. *Mellor v. Denham* (1) has decided that to treat the matter in that way is to treat it as a criminal matter. It is immaterial to say whether we think that decision right, but given under these circumstances I think it was right. The Legislature having treated the matter in this way, I think the present case is within section 47 of the Judicature Act, 1873. It is said there was an alternative remedy given, namely, an order to abate the nuisance and prohibit its recurrence. I cannot think that

if the matter is a criminal one in one sense it is less so because the alternative order is made.

COTTON, L.J. — I am of opinion that this case is within the authority of *Mellor v. Denham* (1), and, if so, it is not necessary to go further into the reasons for holding this to be a criminal matter. In *Mellor v. Denham* (1) a proceeding to enforce a penalty for breach of a by-law made by a school board was held a criminal matter. In principle this case is within that decision. The only difference here is that the Act gives an alternative mode of proceeding. But the Justices could have imposed a penalty, and until they heard and determined the case no one could tell whether they would do so or not. The summons went against the owner for having by default caused a nuisance. The matter was equally criminal whatever was the form of order made by the Justices. I think this appeal must be dismissed.

Appeal dismissed.

Solicitors—Hughes, Hooker & Co., agents for S. G. Johnson, Nottingham, for appellants; Taylor, Hoare & Taylor, agents for Hunt & Williams, Nottingham, for respondent.

[IN THE COURT OF APPEAL.]

(*Appeal from the Queen's Bench Division.*)

1881. { THE GUARDIANS OF THE FUL-
May 20. { HAM UNION (appellants) v.
 { THE GUARDIANS OF THE ISLE
 { OF THANET UNION (respondents).*

Poor — Settlement — Irremovability — Penitentiary supported by Subscriptions — Bona fide Charitable Gift — 54 Geo. 3. c. 170. s. 6; 9 & 10 Vict. c. 66. s. 1; 39 & 40 Vict. c. 61. s. 34.

Section 6 of 54 Geo. 3. c. 170 enacts that no person shall gain a settlement by residence in a charitable institution.

Section 1 of 9 & 10 Vict. c. 66 enacts

* *Coram Bramwell, L.J.; Brett, L.J.; and Cotton, L.J.*

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that no person shall be removed from any parish in which such person shall have resided for five years (by subsequent statutes reduced to one year) "provided always that the time during which such person . . . shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a bona fide charitable gift, shall be excluded from the computation of time hereinbefore mentioned."

Section 34 of 39 & 40 Vict. c. 61 enacts that where any person shall have resided for three years in any parish, under such circumstances in each of such years as would in accordance with the several statutes in that behalf render him irremovable, he shall be deemed to be settled therein until he shall acquire a settlement elsewhere.

A pauper had for upwards of three years been maintained in a penitentiary or home, which was supported by offertories collected in various churches, and by charitable subscriptions from all parts of England:—

Held, that the circumstances of the pauper's residence were not such as to bring her within the proviso to section 1 of the 9 & 10 Vict. c. 66, and that, having become irremovable under that Act, the Act of Geo. 3 did not apply so as to prevent her gaining a settlement under the 39 & 40 Vict. c. 61. s. 34.

Judgment of the Queen's Bench Division affirmed.

Appeal from a judgment of the Queen's Bench Division on a Case stated by Justices.

The case in the Queen's Bench Division is fully reported, *Ante*, p. 42.

A. Charles and Poland, for the appellants, the Fulham Union.—The attention of the Court below was not directed to section 6 of 54 Geo. 3. c. 170.

It is contended that that enactment is not repealed by implication by the 39 & 40 Vict. c. 61. If it is so repealed it throws light on the policy of the Legislature, who did not intend that the benevolence of persons elsewhere than in the parish in which the pauper resides should have the effect of casting a burden upon the rates of that parish.

They also argued, as in the Court below, as to the construction to be placed upon the proviso to section 1 of the 9 & 10 Vict. c. 66.

Prosser, for the respondents, the Isle of Thanet Union, was not heard.

BRAMWELL, L.J.—I think this is a very plain case. I entirely agree with the judgment of Mr. Justice Manisty in the Court below. It is plain, to my mind, that the expression in the proviso to section 1 of the 9 & 10 Vict. c. 66, "subscriptions raised in a parish in which such person does not reside," is meant to apply to the case where persons residing in one parish make a rate or contribution amongst themselves for the relief of a pauper in another parish. The words "not being a bona fide charitable gift" clearly explain the meaning. I think on that point the question is too clear for argument. As to the new point, it is certainly a somewhat curious state of legislation. By the 39 & 40 Vict. c. 61 s. 34, three years' irremovability causes a person to acquire a settlement. Let us see what confers irremovability. It is acquired by residence unless the circumstances are such as to bring it within the exception contained in the proviso to section 1 of the 9 & 10 Vict. c. 66. It is true that under 54 Geo. 3. c. 170 the pauper, if she had resided for any number of years under the circumstances found in the case, would not have gained a settlement. But under the new law irremovability gives a settlement. Her settlement, therefore, is by irremovability instead of residence. I therefore think that we must not deal with the Act of Geo. 3 as though it were inconsistent with the later Acts. It is not, in my view, a right expression to say that the Act of Geo. 3 has by implication been repealed. The right view is that a new head of settlement has been created. Irremovability instead of residence now confers a settlement, and the two Acts are quite consistent. I am of opinion that the appeal should be dismissed.

BRETT, L.J.—I am of the same opinion. I agree with Mr. Justice Manisty in think-

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ing that the words "subscription raised in a parish in which such person does not reside" mean subscription raised in one parish. I think that Mr. Charles must read new words into the Act in order to support his argument. He is obliged to read into the Act, after the words "not being a *bona fide* charitable gift," the words "to him" or "to her." No such words are to be found in the statute. I think the case is a plain one as to that. As to the new point, I confess I think the new Act has by implication repealed the Act of Geo. 3 because the Act of Geo. 3 provides that residence under the circumstances pointed out in the Act shall not give a person a settlement, and by the later Act residence under precisely the same circumstances has the effect of giving a settlement.

COTTON, L.J.—Putting aside the new point for a moment, two questions arise for our decision upon the construction of section 1 of the 9 & 10 Vict. c. 66: First, was the pauper a person wholly or in part maintained by any rate or subscription raised in a parish in which she did not reside? It is said that the words of the proviso must be construed as if they were "maintained by subscription otherwise than in the parish where the pauper resides." Now it can hardly be contended that a parochial rate or subscription is not referred to. I may add that I think that if such a rate or subscription were raised, by collusion, in two parishes it would be within the proviso. But here the subscription is not raised as a parochial subscription from one or more parishes, but is contributed from all over England.

The second question is, whether or not there was a *bona fide* charitable gift here, so that the exception to the proviso applies. It is said that the gift is not within the exception, because it is not a gift to the pauper but to the institution. But, in my opinion, we cannot read the words "to the pauper" into the Act. Therefore the residence of the pauper was such as to bring her within the proviso.

Then, as to the statute of Geo. 3. That Act did not deal with irremovability—it

applied only to residence. I am of opinion that under the subsequent Act the pauper's residence was such as to render her irremovable, and irremovability gives her a settlement. That is a new settlement which she gained under the new law, although she would not have gained it under the Act of Geo. 3.

Appeal dismissed.

Solicitors—Rexworthy, Oswald & Co., for appellants; Paterson, Snow & Bloxam, agents for O. and A. Daniel, Ramsgate, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { THE ALRESFORD RURAL SANITARY
May 30. { AUTHORITY (appellants) v.
SCOTT (respondent).

Highways, Repair of—5 & 6 Will. 4. c. 50. ss. 51, 53, 54—*Gathering Stones on Enclosed Land—Licence to Surveyor to "gather" Stones without making Satisfaction to Owner.*

Under the Highway Act, 1835 (5 & 6 Will. 4. c. 50), s. 51, the surveyor may obtain a licence from Justices to "gather" stones lying upon any enclosed land in the parish without making any satisfaction to the owner for the stones taken.

This was a Case stated for the opinion of the Court by Justices of the Winchester Petty Sessional Division.

The Alresford rural sanitary authority having, by virtue of sections 4 and 5 of 41 & 42 Vict. c. 77, vested in them all the rights, &c., of the surveyor of highways, in that capacity summoned the respondent, Mr. Scott, before the Justices at a special sessions for the highways, under section 51 of 5 & 6 Will. 4. c. 50 (the Highway Act, 1835), he having refused his consent to the surveyor gathering stones from off his enclosed land for the repair of highways in the parish. On the appellants applying for a licence to gather the stones without making any satisfac-

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tion to the respondent for the materials, but admitting their liability to make satisfaction for all damage done to the respondent's land by carrying the same away, the respondent, Mr. Scott, objected that no such licence could be granted, but that the appellants must be ordered to pay the value of the stones taken. The Justices, by a majority, thought that they had no power to grant a licence without giving compensation; they therefore dismissed the summons, and stated this case, asking whether their determination was right in law.

Arthur F. Leach, for the appellants.—It is admitted that these are lands in the parish where the highway to be repaired is. The appellants do not desire to dig, only to gather stones lying upon the lands; they therefore come within the provisions of section 51, and may do so without making satisfaction for the material. The respondent objects that these are enclosed lands; but the words are general—"any lands or grounds within the parish."

Greenwood, for the respondent.—The words "any lands" in section 51 are limited by the subsequent sections, 53 and 54, dealing with enclosed lands. Those sections must be read closely together, and the word "gather" will be found in section 53, so that no gathering on enclosed lands can be done without the notice; and by section 54 gardens and parks cannot be touched at all. That section, however, shews that whenever enclosed lands are touched, satisfaction must be made for the materials taken. It was so in the earlier Acts in respect of gathering as well as digging. This Act was meant to follow the original—13 Geo. 3. c. 78.

HUDDESTON, B.—I think that this case is quite clear. The Legislature in facilitating the acquisition by the surveyor of materials for the repair of the roads in his parish contemplated two classes of cases—one where satisfaction was to be made for materials taken by the surveyor, and the other where it was not. Where stones are dug, got and carried away from

waste lands or common ground, or from a river or brook, there no satisfaction is to be made; and no satisfaction is to be made where stones lying upon any land or grounds are gathered; that is to say, no satisfaction is due for the materials obtained, but the surveyor must pay compensation for damage done in the course of getting the stones or for any injury to the land on which the stones were. Such I conceive to be the meaning of section 51.

Section 53 then provides that, in any case, before materials are taken from enclosed lands notice must be given to the owner to appear before the Justices; and if he appears, or if he does not appear, the Justices have full discretion as to dealing with the matter.

Section 54, however, applies wholly to searching for, digging and getting materials on enclosed land, and in such case the surveyor must make satisfaction for the materials taken and for the damage done also.

There is a proviso applicable to all the proceedings, namely, that garden, yard, avenue, park, &c., shall be free.

The policy of the Act seems to me to be quite clear also; and as these materials were to be gathered only from enclosed grounds, they may be taken without payment.

HAWKINS, J.—The question is whether the Justices had power to grant to the surveyor a licence to gather stones off Mr. Scott's enclosed land without giving compensation for the material taken. In my judgment they had power. It depends on the construction of sections 51, 53, 54. The first part of section 51 applies to searching for, digging and getting materials for the maintenance of the highways in waste lands and rivers, and the earlier part of section 54 enables the surveyor to search for, dig and get materials under certain circumstances in enclosed lands. Thus the earlier part of section 51 and the whole of section 54 together mean that the surveyor may dig on waste lands and carry away the material for nothing; but if he cannot find material there, he may go to the Justices, who can authorise him to go and dig

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elsewhere on enclosed land, so long as it is not park or garden, and take material sufficient, only he must pay satisfaction for the materials taken and for damage done.

Then, going back to section 51, as to gathering stones, the surveyor may do that in any lands in the parish, enclosed or not, without paying for the stones, only for the damage; but the stones shall not be gathered without the consent of the owner or the licence of Justices; and while he is limited as to gathering to lands in the parish, the damage is to be settled just in the same way as in the case of getting, namely, by the Justices. Then what has section 53, as to enclosed lands, to do with the question? I think it is merely this, that although the surveyor has a power to gather stones on any lands in the parish, to do so on enclosed lands a month's notice of the application to Justices for the licence is necessary, and a licence must be applied for and obtained.

I can quite understand that Justices may and would decline to give a licence when it would be unfair to the owner to do so and occasion him a sensible loss. They have full discretion as to granting or refusing the licence, but if they grant it it must be unfettered by any order on the surveyor to make satisfaction for the value of the materials taken.

Judgment for appellants. Case remitted.

Solicitors—Prior, Bigg, Church & Adams, agents for Adams & Co., Alresford, for appellants; Parkers, agents for A. F. M. Downie, Alton, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]

1881. }
May 23, 27. } HARDY v. ATHERTON.

Bastardy Order—Subsequent Marriage of Mother—Ability of Husband to support
—35 & 36 Vict. c. 65. s. 3.

A bastardy order obtained under 35 & 36 Vict. c. 65, is not revoked by the subsequent marriage of the mother, though the man she marries is able to maintain the child, nor is the enforcement of the order in such case a matter for the discretion of the Justices.

Stacey v. Lintell (48 Law J. Rep. M.C. 109; Law Rep. 4 Q.B. D. 291). *Southeran v. Scott, ante*, p. 56; Law Rep. 6 Q.B. D. 518.

CASE stated by Justices under 20 & 21 Vict. c. 43 and 42 & 43 Vict. c. 49.

At a petty sessions held at Newton, in the county of Lancaster, on the 25th of August, 1877, an order in bastardy was made at the instance of the appellant, Hannah Vernon, on the respondent, William Atherton, the putative father of an illegitimate child of Hannah Vernon, born on the 8th of July, 1877. The material part of the order was as follows: "We do hereby adjudge the said William Atherton to be the putative father of the said bastard child, and we order that the said William Atherton do pay unto the said Hannah Vernon, the mother of the said child, so long as she shall live and be of sound mind and shall not be in any gaol or prison or under sentence of transportation, or to the person who may be appointed to have the custody of such child, under the provisions of an Act passed 8 Vict., intituled, 'An Act for the further Amendment of the Laws relating to the Poor in England,' the sum of 5s. per week, for the maintenance and education of the said child, from the birth of the said child until the said child shall attain the age of sixteen years or shall die."

At a petty sessions held on the 27th of November, 1880, an information was preferred by the appellant, calling on the respondent to shew cause why he should not pay to the appellant 4l. 5s., being arrears then due under the above order.

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It was proved that the appellant had, on the 22nd of March, 1880, married James Hardy, that she was still living with him as his wife, and that he was able to maintain the child.

The Justices were of opinion that as the appellant had married, her husband, James Hardy, was responsible for and capable of maintaining and educating the said child, and that such order could not be enforced, and they declined to make any order for the committal of the respondent, and dismissed the information and complaint. From this decision the appellant now appealed.

The question for the opinion of the Court was, whether the above order could be legally enforced against the respondent by committal during such period as the appellant resided with her husband, and he was able to maintain the said child. Can there be a double liability?

McClymont, for the appellant.

Croome, for the respondent.

The arguments appear sufficiently in the judgments, where the authorities cited are discussed.

Cur. adv. vult.

HUDDLESTON, B. (on May 27).—This is a Case, stated by Justices for our determination, which raises the question whether a bastardy order can be enforced against the putative father of an illegitimate child when the mother has married a husband who is able to support the child. The point turns on the construction of the Bastardy Act (35 & 36 Vict. c. 65) (1).

(1) 35 & 36 Vict. c. 65. s. 3: "Any single woman who may be with child, or who may be delivered of a bastard child after the passing of this Act, may, either before the birth or at any time within twelve months from the birth of such child, . . . make application to any one Justice of the peace acting for the petty sessional division of the county, or for the city, borough or place in which she may reside, for a summons to be served on the man alleged by her to be the father of the child, . . . and such Justice of the peace shall thereupon issue his summons to the person alleged to be the father of such child to appear at a petty session to be holden, after the expiration of six days at least, for the petty sessional division, city, borough or other place in which such Justice usually acts."

I may premise by stating that under the old law bastardy orders were made in relief of the parish in the event of the child becoming chargeable to the parish. Subsequent legislation enabled the order to be made in favour of the mother (7 & 8 Vict. c. 101), and it is quite clear that the policy of that Act and the subsequent Acts was to throw on the father a portion of the burden of maintaining the child. In the present case the order has been obtained by the mother, under section 4 of the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), and it is to be observed that the only occasions on which the order is to cease are to be found in section 5 (1), namely, the death of the child, or that the child has attained the age of thirteen or sixteen years. There was a proviso in a previous Act (7 & 8 Vict. c. 101. s. 5) to the effect that no order for the support of a bastard child should be of any force after the marriage of the mother. Had therefore that proviso remained in existence, the order would have ceased upon the marriage of the mother; but that portion of the section is repealed by the Act of 1872, and consequently it is clear that the attention of the Legislature had been called to the proviso and that it was no longer intended that the order should cease on the marriage of the mother. This is the more remarkable, because that portion of the section which enacts that all money due

By section 4, the Justices are empowered to make an order on the putative father for payment to the mother of a sum not exceeding 5s. a week, and, in case of his neglect or refusal to pay the sum, to direct that the sum due be recovered by distress and sale; and if no sufficient distress can be had, to cause him to be committed to gaol for a term not exceeding three months.

Section 5: "No order for the maintenance and education or for contribution towards the relief of any such child, made in pursuance of this Act, shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of thirteen years, or after the death of such child: provided that the Justices may in the order direct that the payments to be made under it, in respect of the child, shall continue until the child attains the age of sixteen years, in which case such order shall be in force until that period."

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under the order shall be payable to the mother, so long as she lives and is of sound mind and is not in any gaol or prison or under sentence of transportation, and that in such case the Justices may appoint some person to have charge of the child, remains unrepealed. These provisions are introduced into the bastardy order and appear in the order before us in the present case.

Under these circumstances I entertain no doubt that the order on the putative father continues, although the mother marries and the husband she marries is competent to maintain the child. On the other view great difficulties would arise: the mother might have to make frequent applications to the Justices to order the putative father to continue payment, and they would have on each occasion to decide whether the husband was competent to maintain the child or not—one week he might be able and another week he might be unable. Whatever the means of the mother, she may apply for the order, because the policy of the law is to compel the father to contribute to the support of his own offspring.

Our view of the law is supported by *Southeran v. Scott* (2), where, with one exception, this very point was practically decided by Field, J., and Manisty, J. It is true that the case did not contain the element that the husband was able to maintain the bastard child, and it was suggested that had that element appeared Mr. Justice Field would have been of a contrary opinion, but I have taken the opportunity of consulting my brother Field, and he has told me that he and Mr. Justice Manisty were of opinion that the competency of the husband ought to have no effect, and he also added that the passage in the Law Reports by which he is represented to have inclined to the other view was rather an observation which fell from him in deference to what had been said by Mr. Justice Lush in a previous case, and not because he agreed with him. The report in the Law Journal Reports, though in substance it is the same, is somewhat different, and does not

represent Mr. Justice Field as speaking so positively on the point.

Against this view of the law the counsel for the respondent quoted the case of *Lang v. Spicer* (3), in answer to which it is only necessary to state that the question there was not between the mother and the putative father, but between the father and the parish. The child had become chargeable to the parish, and the parish had called on the putative father to maintain the child; but it was held that as 4 & 5 Will. 4. c. 76. s. 57 had enacted that a man who married a woman with a bastard child should be liable to maintain such child, if the child became chargeable to the parish the husband of the mother was liable for its support. In the other case which was cited—*Stacey v. Lintell* (4)—the question was, whether the order could be obtained by a married woman, and it is therefore not an authority in point. It is true that, in giving judgment, Mr. Justice Lush threw out a suggestion that on the marriage of the mother the Justices would have a discretion whether they would continue an order previously made on the putative father, but, with all respect to that learned Judge, I do not see that the Justices have any such discretion. They have only power to make the order, and the only occasion when they have power to discontinue the order is when the child attains the age of thirteen or dies, and, by the previous statute, 7 & 8 Vict. c. 101. s. 5, when the mother dies or becomes of unsound mind or is in prison, in which case the payments may be transferred to some other person appointed by the Justices to have the custody of the child. Therefore I am of opinion this order remains in force, and that the question of the competency of the husband to maintain the child has no bearing on the case.

HAWKINS, J.—Under the circumstance stated in this case, I am of opinion that the order can be legally enforced against the respondent. As between the parish and the husband, no doubt he

(3) 1 Mee. & W. 129; 1 Law J. Rep. M.C. 60.

(4) 48 Law J. Rep. M.C. 109; Law Rep. 4 Q.B. D. 291.

(2) *Ante*, p. 56; Law Rep. 6 Q.B. D. 518.

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is liable to maintain the child as a part of his family under the 57th section of 4 & 5 Will. 4. c. 76, and so long as he is of ability so to maintain it the child cannot legally become chargeable upon the parish. On this ground, upon the authority of *Lang v. Spicer* (3), it was contended on behalf of the respondent that the order could not be enforced. Had the law remained at the present day the same as it was when that case was decided it would have been an authority in point by which we should have been bound. Indeed, I, for one, should, without any authority being cited, have come to the same conclusion; for, as the law then stood, the putative father was only liable so long as the child was chargeable to the parish, which it could not be if it formed part of the family of a person able to maintain it without parish assistance. Orders at that period were only made in relief of the parish, and on the face of them it was so expressed. The 7 & 8 Vict. c. 101, however, repealed the 4 & 5 Will. 4. c. 76 and the earlier statutes, so far as related to the orders upon putative fathers, and by sections 2, 3 and 5 Justices were empowered, on the application of any single woman who had been delivered of a bastard child, to make an order on the putative father for payment to her of a weekly sum, "to be due and payable to her so long as she lives and is of sound mind and not in gaol, &c.: provided always that the order should not remain of any force or validity after the child attained the age of thirteen years or after the marriage of the mother." By 35 & 36 Vict. c. 65. s. 3 these provisions and this proviso were expressly repealed, and by section 4 power is given to Justices to make an order on the putative father for payment to the mother of a weekly sum for the maintenance and education of the child till it arrives at the age of thirteen (or sixteen, if specially ordered); and in section 7 provision is made for making parish officers receivers under such order in the event of the child becoming chargeable. There is no re-enactment of the proviso that the order should become inoperative on the mother's marriage. The

36 & 37 Vict. c. 9 does not affect the present question.

Since the repeal of the portions of the statute 4 & 5 Will. 4, above referred to, I find no ground for saying that orders upon putative fathers are only enforceable by way of relief to the parish, and, since the repeal of the proviso 7 & 8 Vict. c. 101. s. 5, no ground for saying they are suspended or of no avail during the marriage of the mother. They are made payable generally to the mother, and the only limits to their force are those to which I have referred, namely, the child attaining thirteen (or sixteen, if specially ordered) or its death.

The case of *Stacey v. Lintell* (4) was cited in support of the respondent's view, but that case only decided that where a woman is married and living with her husband she can no longer be deemed a single woman having power to apply for an affiliating order under 35 & 36 Vict. c. 65. It is no authority for saying that an order already made on the application of a woman when single cannot be enforced after her marriage. The observations of Mr. Justice Lush, just before the close of his judgment, though entitled to great respect, as everything which falls from that learned Judge is, were not necessary to the decision of that case, and do not purport to be the result of deliberate reflection.

It only remains for me to notice one other case—that of *Southeran v. Scott* (2)—by which it was decided that an order of affiliation was not necessarily revoked or suspended by the marriage of the mother; so far that case is strongly in favour of the appellant. In the report of the case Mr. Justice Field is reported to have said, "It may or may not be the case that they (the Justices) have a discretion, upon the hearing of a summons against the putative father to enforce payment, to take into account the means of the woman's husband when they are shewn to be sufficient to maintain the child." I do not understand those remarks to be intended to intimate any hostile opinion to that which I have arrived at.

In the result, I am of opinion that the

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order can be enforced notwithstanding the marriage of the appellant and the ability of her husband to support the child, which, by compulsion of law, he has taken as a member of his family; and I am glad that it is so, for common sense and common humanity tell me that the putative father ought not to be relieved from liability to contribute his share of the maintenance of his own offspring at the expense of the man who has married the woman who had the misfortune to bear it, who possibly may have a hard struggle to support the family of which he is legitimately the head, and to whom the contribution towards the one foreign member of it may be of much importance. I rejoice also to think that since the days of Queen Elizabeth, our laws have been so far humanised that a bastard child is no longer a mere thing to be shunned by an overseer—whose existence is unrecognised until it becomes a pauper, and whose only legitimate home is the workhouse—that it is no longer permissible to punish its unfortunate mother with hard labour for a year, nor its father with a whipping at the cart's tail (5); but that even an illegitimate child may now find itself a member of some honest family, and that the sole obligation now cast upon its parents is that each may be compelled to bear her and his own fair share of the maintenance and education of the unfortunate offspring of their common failing.

Judgment for the appellant.

Solicitors—Horne, Hunter & Birkett, agents for Moore & Son, Warrington, for appellant; J. J. and C. J. Allen, agents for W. Lees, Wigan, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]

1881. }
May 23. }

MARTIN v. BARKER.

Licensing Acts—Excise Licence—Sale during Closing Hours—37 & 38 Vict. c. 49. s. 3.

By the Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 3, "All premises in which intoxicating liquors are sold by retail" are to be closed during certain hours:—Held, that this enactment was not confined to premises licensed by the Justices to sell intoxicating liquors, but included premises in which intoxicating liquors were sold in pursuance of an excise licence granted under 24 & 25 Vict. c. 21.

CASE stated by Justices under 20 & 21 Vict. c. 43 and 42 & 43 Vict. c. 49.

An information was preferred by the respondent against the appellant for that the appellant on the 14th of August, 1880, at Barrow-in-Furness, in the county of Lancaster, at twelve o'clock in the evening, at which time premises for the sale of intoxicating liquors by retail, situate in a town as defined by the Licensing Act, 1874, are directed to be closed (1), unlawfully did keep open certain premises for the sale of intoxicating liquors by retail.

On the hearing of the information the following facts were proved: The appellant kept a shop in the town of Barrow-in-Furness which was used by him exclusively for the sale of intoxicating liquors. He was the holder of an

(1) 37 & 38 Vict. c. 49 (Intoxicating Liquors Act, 1874).—Hours of Closing. Section 3: "All premises in which intoxicating liquors are sold by retail shall be closed as follows; that is to say"—[then follows a statement of the prohibited hours].

Section 9: "Any person who, during the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this Act, sells or exposes for sale in such premises any intoxicating liquors, or opens or keeps open such premises for the sale of intoxicating liquors, or allows any intoxicating liquors, although purchased before the hours of closing, to be consumed in such premises, shall for the first offence be liable to a penalty not exceeding 10*l.*, and for any subsequent offence to a penalty not exceeding 20*l.*"

(5) See 18 Eliz., and Wilson's Justice of the Peace, p. 86.

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excise retail bottle licence, in addition to a wholesale licence granted in pursuance of 24 & 25 Vict. c. 21 (2), but he did not hold any licence for the sale of intoxicating liquors granted by the licensing Justices.

It was also proved that during prohibited hours—namely, at midnight on the 14th of August, 1880—the appellant sold a bottle of gin to two men in his shop.

On the above facts the Justices convicted the appellant in the sum of 2*l.* 11*s.* 6*d.*, and the appellant being dissatisfied with their decision, as being erroneous in point of law, applied to them to state a Case for the opinion of the superior Court.

The Justices accordingly stated a Case, of which the above are the material particulars, and the question for the opinion of the Court was, whether the appellant was subject to the provisions of the Licensing Acts, 1872 and 1874, as to the hours of closing his premises, so far as regards his retail trade in intoxicating liquors.

(2) The following were the licences held by the appellant, granted in pursuance of 24 & 25 Vict. c. 21:—

	£	s.	d.
Dealer in spirits	10	10	0
(a) Ditto to retail any quantity not less than one reputed quart bottle to be consumed off the premises (to be granted in England only)	3	3	0
Dealer in foreign wine and in sweet or made wines	10	10	0
Dealer in beer.			
(b) Ditto to retail beer to be con- sumed off the premises (to be granted in England only)	3	6	1½
Total	£27	9	1½

A. SHERIFF (L.S.)

Collector of Inland Revenue.

NOTE.—Any authority granted by this licence, which is founded upon a magisterial certificate, will cease if the magisterial certificate is forfeited in pursuance of the Licensing Act, 1872, or become void under any of the provisions of that Act (35 & 36 Vict. c. 94. s. 63).

1. The spirit dealer's licence does not authorise the sale of less than two gallons of spirits of the same denomination at a time to the same person.

2. The beer dealer's licence does not authorise the sale of less than four gallons and a-half or two dozen reputed quart bottles.

J. F. Olerk, for the appellant.—Section 9 (1) of the Licensing Act, 1874 (37 & 38 Vict. c. 49), under which the appellant was convicted, declares the penalty for selling intoxicating liquor during prohibited hours on “premises for the sale of intoxicating liquors” directed to be closed by the Act, and section 3 (1) declares what premises are to be closed, namely, “all premises in which intoxicating liquors are sold by retail;” but the marginal note, which contains an exposition of that section, states the effect to be “hours of closing premises licensed for sale of intoxicating liquors,” which means premises licensed by Justices—see Intoxicating Liquors Act, 1872 (35 & 36 Vict. c. 94), ss. 73, 74 (3).

The marginal note to a section is not binding as an explanation—see *per Willes, J.*, in *Olaydon v. Green* (4); but the Act of 1874 is to be construed with the Act of 1872, and where by section 24 of the earlier Act it is enacted that “all premises on which intoxicating liquors are sold” are to be closed, it is clear from the latter part of the section those words are limited to premises licensed by Justices. That section is repealed, but the same words are repeated in the Act of 1874, and there is no disposition shewn by the Legislature to extend their meaning. The Licensing Acts are police Acts framed to prevent drunkenness; they are not aimed at those who purchase liquor in bottle. The prohibited hours are not intended

(3) 35 & 36 Vict. c. 94 (Licensing Act, 1872), s. 73: “A licence as defined by this Act shall not be required for (1) The sale of wine by retail, not to be consumed upon the premises, by a wine merchant, in pursuance of a wine dealer's licence granted by the Commissioners of Inland Revenue; or (2) The sale of liquors or spirits by retail not to be consumed upon the premises, by a wholesale spirit dealer whose premises are exclusively used for the sale of intoxicating liquors, in pursuance of a retail licence granted by the Commissioners of Inland Revenue under the provisions of 24 & 25 Vict. c. 21, entitled, ‘An Act for granting to Her Majesty certain Duties of Excise, and Stamps.’”

Section 74: “Licence” means a licence for the sale of intoxicating liquors granted by Justices in pursuance of the Intoxicating Liquor Licensing Act, 1828.

(4) 37 Law J. Rep. C.P. 226; Law Rep. 3 C.P. 511.

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to extend to those who sell by the bottle under excise licences.

H. G. Shee, for the respondent.—The policy of the Act would be defeated if after closing hours parties could go and purchase liquor from other shops. The words of section 3 are clear; they include all premises in which intoxicating liquors are sold by retail, and the appellant's premises were used exclusively for the sale of intoxicating liquors. The fact that section 24 of the Act of 1872 is repealed would seem to shew that the Legislature considered the limited jurisdiction of that section to be insufficient.

HUDDLESTON, B.—I am of opinion the Justices were right. The conviction was under section 9 of the Act of 1874, which directs that "any person who during the time at which premises for the sale of intoxicating liquors are directed to be closed in pursuance of the Act sells or exposes for sale in such premises any intoxicating liquor," &c., shall be liable to a penalty; and in order to see what premises are referred to one has to refer back to section 3, which declares them to be "all premises in which intoxicating liquors are sold by retail." I must read these sections in their ordinary and common sense, and that is, that in every case where intoxicating liquors are sold by retail the person selling is subject to the restrictions imposed by the Act. The appellant sold intoxicating liquors during prohibited hours in premises which, in my opinion, were directed by the Act to be closed, and this conviction, therefore, was right and must be affirmed.

HAWKINS, J.—I am of the same opinion. Section 3 is clear. It has been argued that it only applies to premises licensed by Justices for the sale of intoxicating liquors, but there is nothing in the Act of 1874 which indicates this conclusion. We have been referred to the Act of 1872, but without discussing the various sections of that Act, it is sufficient to point out that by section 73, sub-section 2, it was clearly contemplated there might be premises used for the sale of intoxicating liquors, for which a licence by Justices was not required. This very section recognises a

sale of intoxicating liquors in pursuance of an excise licence, not only wholesale but retail. It appears to me the Justices were right.

Conviction affirmed.

Solicitor—Parkers, agents for Bradshaw, Barrow-in-Furness, for appellant; Parkers, agents for S. E. Major, Barrow-in-Furness, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]

1881. } *CULLEY (appellant) v.*
May 31. } *CHARMAN (respondent).*

Husband and Wife—Adultery of Wife—Liability of Husband for Maintenance—Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 33.

A husband is not liable under section 33 of the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), to maintain a wife who has committed adultery and is living apart from him.

CASE stated by Justices under 20 & 21 Vict. c. 43.

The appellant, a cooper, was summoned at petty sessions by the respondent, a relieving officer for the Cookham Union, upon a complaint made in December, 1880, for that he, being a person of ability, had neglected to maintain his wife, whom he was legally bound to maintain, whereby she had become chargeable to the union.

The appellant appeared before the Justices in answer to the summons, and proved adultery on the part of his wife in 1880, and that he had not cohabited with her since its discovery.

The Justices, notwithstanding, ordered the appellant to pay the sum of 4s. weekly for the maintenance of his wife, but stated a Case for this division on the question whether he was liable, upon the above facts, to contribute to such maintenance.

McCall, for the appellant.—The question is, whether a man is bound to main-

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tain his adulterous wife. Under the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 33, the Justices may summon a husband "to appear before them to shew cause why an order should not be made upon him to maintain his wife." But *The King v. Flintan* (1) is an express authority that the appellant was not bound, under the circumstances, to maintain her.

He was stopped by the Court.

H. D. Greene, for the respondent.—*The King v. Flintan* (1) arose under the Vagrant Act (5 Geo. 4. c. 83. s. 3), and the question there was as to criminal liability on the part of the husband. Moreover, that case was decided in 1830, and there have been many poor-law statutes passed since then, the object of which has been to create a liability on the part of the persons in the position of the appellant, even though they may not be civilly liable. In like manner the President of the Divorce Court can make an order for alimony upon an innocent husband under 20 & 21 Vict. c. 85. s. 32. At all events, there was a discretionary power conferred by the statute upon the Justices, and this Court will not interfere with the exercise of that discretion.

Huddleston, B.—This case is really too clear for argument and is covered by the decision in *The King v. Flintan* (1), which is a distinct authority in favour of the appellant. During the argument Mr. Justice Littledale remarked that the wife "having rendered herself unworthy of her husband's protection, returns to the same state as if she were not married;" and the same learned Judge said in the course of his judgment, "If the husband is not obliged to answer for the wife's contracts or to receive her into his house, it cannot be said that he is legally bound to maintain her." And Mr. Justice Parke said, "It would be strange if the Court could hold that a man was not civilly liable for the supply of necessaries to his wife, and yet that not supplying them rendered him a vagrant." These *dicta* seem to be conclusive on the present

question. Mr. Greene has attempted to draw a distinction between the Vagrant Act, under which *The King v. Flintan* (1) arose, and the Poor Law Amendment Act, 1868, and has contended that the latter statute makes a man liable under any circumstances when he has been so adjudicated by the Justices. But, as Mr. McCall has pointed out, the summons was a summons to shew cause, which might be done on several grounds, such as non-ability, or that the woman in respect of whom he was called upon to contribute was not his wife. And it seems to me that both morally and legally it is a complete answer to such a summons to shew that the wife has been guilty of adultery which he has not condoned, and that a husband is no more liable to contribute towards her maintenance under these statutes than he is civilly responsible for debts under like circumstances. This appeal must therefore be allowed.

Hawkins, J.—I am of the same opinion. No authority is required for the proposition that under ordinary circumstances a husband is not liable to maintain a wife living apart from him in adultery. The only question is, whether 31 & 32 Vict. c. 122 created a liability which did not exist before. I fail to see any such intention on the part of the Legislature. I therefore hold that when a woman has committed adultery, which her husband has neither connived at nor condoned, and is living apart from her husband, no obligation is cast upon the husband to maintain her.

Appeal allowed.

Solicitors—*Jas. Scarlett*, agent for Jones, Maidenhead, for appellant; *C. J. Mander*, agent for *B. A. Ward*, Maidenhead, for respondent.

(1) 1 B. & Ad. 227.

[CROWN CASE RESERVED.]

1881. }
 June 18. } THE QUEEN v. MOST.*

Murder—Endeavouring to Persuade, or Encouraging to Commit—Newspaper Article—24 & 25 Vict. c. 100. s. 4.

Section 4 of 24 & 25 Vict. c. 100 enacts (*inter alia*) that “whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person, to murder any other person, whether he be a subject of her Majesty or not, and whether he be within the Queen’s dominions or not, shall be guilty of a misdemeanour.”

The defendant was indicted under that section, and was proved to have published an article written in German in a newspaper published in that language in London, which was sold to the public and also circulated among subscribers. The article exulted in the recent murder of the Emperor of Russia, and commended it as an example to revolutionists. The jury were directed that if they thought that by the publication of the article the defendant did intend to, and did, encourage or endeavour to persuade any person to murder any other person, whether a subject of her Majesty or not, and whether within the Queen’s dominions or not, and that such encouragement and endeavouring to persuade was the natural and reasonable effect of the article, they should find him guilty:—

Held, that such direction was correct. The offence of encouraging or endeavouring to persuade any person to murder any other person within the meaning of 24 & 25 Vict. c. 100. s. 4, may be completed by the publication of an article in a newspaper, although not specifically addressed to any one person.

CASE reserved by Lord Coleridge, C.J.

Johann Most was tried before me at the Central Criminal Court on an indictment containing twelve counts. The first two counts contained charges of publishing a scandalous libel at common law; and on these counts a separate verdict was taken, and no question arises upon them.

* *Coram* Lord Coleridge, C.J.; Grove, J.; Denman, J.; Huddleston, B.; and Williams, J.

The remaining ten counts charged the prisoner with offending against 24 & 25 Vict. c. 100. s. 4 (1). The subject-matter of all the counts was the same—the same publication which was treated as a common law libel in the first two counts, was treated as an offence against the statute in the remaining ten. It was an article written in German in a newspaper written entirely in that language, but published weekly in London, and enjoying an average circulation of 1,200 copies. The prisoner was proved to be the editor and publisher of the paper, several copies of the paper were proved to have been bought at his house, and some copies of a reprint of the article in question were actually sold by the prisoner himself to one of the witnesses called on behalf of the Crown. It is not necessary to set out the article at length, but it contained, amongst others, the following passages:—

“Like a thunderclap it penetrated into princely palaces where dwell those crime-beladen abortions of every profligacy who long since have earned a similar fate a thousandfold. . . .

“Nay, just in the most recent period they whispered with gratification in each other’s ears that all danger was over because the most energetic of all tyrant haters, the ‘Russian Nihilists,’ had been successfully terminated to the last member. . . .

“Then comes such a hit.

“William, erewhile Canister-shot Prince of Prussia, the new Protestant-Pope and Soldier-Emperor of Germany, got convulsions in due form from excitement. Like things happened at other Courts.

“At the same time they all know that every success has the wonderful power not only of instilling respect, but also of inciting to imitation. There they simply tremble then from Constantinople to

(1) The 4th section of the 24 & 25 Vict. c. 100 is as follows: “All persons who shall conspire, confederate and agree to murder any person, whether he be a subject of Her Majesty or not, and whether he be within the Queen’s dominions or not, and whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person, to murder any other person, whether he be a subject of Her Majesty or not, and whether he be within the Queen’s dominions or not, shall be guilty of a misdemeanour,” &c.

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Washington for their long since forfeited heads.

"When in many countries old women only and little children yet limp about the political stage with tears in their eyes, with the most loathsome fear in their bosoms of the castigating rod of the State night watchman, now, when real heroes have become so scarce, such a Brutus-deed has the same effect on better natures as a refreshing storm. . . .

"To be sure it will happen once again that here and there even Socialists start up, who, without that anyone asks them, assert that they for their part abominate regicide because such an one after all does no good, and because they are combating not persons, but institutions.

"This sophistry is so gross that it may be confuted in a single sentence. It is clear, namely, even to a mere political tyro, that State and Social institutions cannot be got rid of until one has overcome the persons who wish to maintain the same. With mere philosophy you cannot so much as drive a sparrow from a cherry tree, any more than bees are rid of their drones by simple humming.

"On the other hand, it is altogether false that the destruction of a prince is entirely without value because a substitute appointed beforehand forthwith takes his place.

"What one might in any case complain of that is only the rarity of so-called tyrannicide. If only a single crowned wretch were disposed of every month, in a short time it should afford no one gratification henceforward still to play the monarch. . . .

"But it is said, 'Will the successor of the smashed one do any better than he did?' We know it not. But this we do know, that the same can hardly be permitted to reign long if he only steps in his father's footsteps.

"Meanwhile, be this as it may, the throw was good; and we hope that it was not the last.

"May the bold deed which, we repeat it, has our full sympathy, inspire revolutionists far and wide with fresh courage."

The ten counts framed upon section 4

of 24 & 25 Vict. c. 100 all charged the prisoner with having "encouraged" or "endeavoured to persuade" persons to "murder other persons," some named and others not named, who were in all cases not subjects of Her Majesty, nor within the Queen's dominions.

The 3rd and the 9th, 10th, 11th and 12th counts, so far as material to the present question, were as follows. (They may be taken as specimens of the intermediate counts, which were in their legal incidents the same):—

The 3rd count alleged that Johann Most unlawfully, knowingly, wilfully and wickedly did encourage certain persons whose names to the jurors were unknown, to murder certain other persons, to wit the Sovereigns and Rulers of Europe, not then being within the dominions of Our Lady the Queen, and not being subjects of the Queen, against the form of the statute, &c.

The 9th count alleged that Johann Most unlawfully, knowingly, wilfully and wickedly did encourage certain persons, whose names are to the jurors aforesaid unknown, to murder a certain other person, to wit His Imperial Majesty Alexander the Third, Emperor of all the Russias, not then being within the dominion of Our Lady the Queen and not being a subject of the Queen, against the form of the statute, &c.

The 10th count was similar to the 9th, except that the charge was of "endeavouring to persuade," instead of "encouraging."

The 11th and 12th counts were similar to the 9th and 10th respectively, except that the name of the Emperor of Germany was substituted for that of the Emperor of All the Russias.

The evidence in support of these counts was the same as that in support of the 1st and 2nd counts; and the only encouragement and endeavour to persuade proved was the publication of the libel.

I directed the jury that if they thought that by the publication of the article the defendant did intend to, and did encourage or endeavour to persuade any person to murder any other person, whether a subject of Her Majesty or not, and

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whether within the Queen's dominions or not, and that such encouragement and endeavouring to persuade was the natural and reasonable effect of the article, they should find the prisoner guilty upon the last ten counts, or such of them as they thought the evidence supported. The jury convicted the prisoner upon all the ten counts, and there was abundant evidence to justify them, if my direction was correct.

Entertaining, however, some doubt as to the correctness of my direction, I deferred sentencing the prisoner, and I have now to request the opinion of the Court of Criminal Appeal whether such direction was correct in point of law or not.

If the Court of Appeal thinks the direction correct, the conviction on those ten counts is to be affirmed; if otherwise, the conviction on those ten counts is to be quashed.

A. M. Sullivan, for the defendant.—Although the prosecution arises out of a libel contained in a newspaper article, the charge is not one of writing a seditious or scandalous libel at common law, but of an actual personal proposal or transaction passing between the defendant and other persons with intent on his part to encourage and persuade them to commit the crime of murder, within the object and meaning of the 4th section of 24 & 25 Vict. c. 100.

The responsibility of a newspaper editor, whereby he is constructively held to know and be responsible for all that is said, written and done within the four corners of his newspaper for the purpose of punishment or prosecution in certain cases, is totally distinct and different from the nature of the transaction contemplated by this section.

[*LORD COLERIDGE*.—The only point reserved is, whether this Act of Parliament is satisfied by that which is enough to satisfy a conviction at common law.]

The section under which the defendant is indicted contemplates something more than the mere publication of a seditious or scandalous libel; it contemplates an actual personal transaction between the parties. There is nothing here in the nature of a personal proposal to

any defined person. Before this statute was passed, there was already an abundant remedy by law to meet the case of a newspaper publisher inciting, encouraging or endeavouring to persuade any person to murder a foreign ruler—see *The Queen v. Peltier* (2) and *The Queen v. Vint* (3).

The history of this section shews that the mischief the statute was intended to remedy was something essentially different from a scandalous libel. The mischief was conspiring to murder, and the words "solicit, encourage or persuade," and "endeavour to persuade," or "shall propose to," mean solicitations from a person encouraging or plotting a conspiracy to murder to others to persuade them to enter into and engage in such a conspiracy.

The section is taken from an Act passed for Ireland in 1829 (10 Geo. 4. c. 34). That Act adopted it without alteration from the Irish Act of 1798 (38 Geo. 3. c. 57), whilst the Act of 1798 adopted it with an addition from the Irish Act of 1796 (36 Geo. 3. c. 27). That Act was the source, and is entitled "An Act to make Conspiracy to Murder a Felony without Benefit of Clergy." It enacts that "All persons who shall by due course of law be convicted of conspiring, confederating or agreeing to murder any person, shall be and be adjudged felonious." In 1798 the next Irish Conspiracy Act was passed, entitled "An Act to amend an Act passed in the 36th year of His present Majesty, intituled 'An Act to make Conspiracy to Murder Felony without Benefit of Clergy,'" in which the words used are almost identical with those of 24 & 25 Vict. c. 100. s. 4. Down to 1829 those Acts were known as the "Conspiracy to Murder Acts" in force in Ireland, and were notoriously passed in reference to the agrarian confederacy to murder. They were passed to punish Irish people who were said to be going about soliciting others to join the confederacy to murder. The provisions of those Acts were never applied to England until 1861. They were then imported into the

(2) *State Trials*, vol. xxviii. p. 530.

(3) *Ibid.* vol. xxvii. p. 627.

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English statute book for the purpose of punishing conspiracy to murder, and nothing else. There is no single instance of a newspaper being prosecuted under the Irish Acts, and the only prosecution the Crown has ever attempted under this Act, until the present one, was the case of *The Queen v. Fox* (4), before the Court for Crown Cases Reserved in Ireland, where it was decided that the prisoner, who wrote and posted a letter addressed to H., in which he requested H. to murder K., the letter having fallen by accident into the hands of a third person, who gave it to a magistrate, and, never having reached H., could not be convicted of soliciting or endeavouring to persuade H. to murder K. There must be some definite person to whom the encouragement, solicitation or proposal to murder must be addressed, and it is not sufficient if it be to the public generally, and to no one in particular. The article in the *Freiheit* contained no proposal to a defined person to murder a defined person.

The Attorney-General (Sir H. James) (with him *The Solicitor-General (Sir F. Herschell)*, *Poland* and *A. L. Smith*).—Section 4 of 24 & 25 Vict. c. 100 is perfectly unambiguous, and does not require the light of history to read it. It is nothing more than a declaration of the common law; it always was a crime to incite to murder or to any other crime, apart entirely from the question of conspiracy—see *Russell on Crimes*, vol. i. (5th ed.) p. 907. The argument that a general incitement is not within the Act is untenable. If the prisoner, instead of writing the words, had gone to A. B., and by word of mouth repeated to him this article, it would, beyond all question, have been evidence for the jury of an encouragement to murder; so, when it is sent or sold to the public in general, to the subscribers in particular, and to the witness who was called. If the prisoner had addressed a crowd, and had urged upon them what is written in the article, it cannot be said that it would be less an offence because the crowd was composed necessarily of many persons, instead of

the words being addressed to a single person in a room. A speaker addressing a crowd addresses the individuals of which that crowd is composed.

He was stopped by the Court.

LORD COLERIDGE, C.J.—I am of opinion that this conviction should be affirmed. The question arises upon the 4th section of the 24 & 25 Vict. c. 100, which enacts that all persons who shall, or anyone who shall (I leave out the unnecessary words), encourage, or who shall endeavour to persuade any person to murder any other person, whether a subject of the Queen or within the Queen's dominions, or not, shall be guilty of a misdemeanour.

Now the doubt that arose in my mind was, whether the words of this section were satisfied by publication broadcast of that, which if directed *ore tenus* to a particular individual, or *ore tenus* to a great number of individuals, or by writing to a particular individual or a great number of individuals, would undoubtedly have been within the words of the section. On consideration, I think that doubt was not well founded; indeed, all doubt has been entirely cleared away by the argument which I have heard this morning. I do not think it necessary to pursue the enquiry, however interesting it may be, as to the history of this clause, because, as has been truly observed, we have not to do with the history of the words, unless the words in the statute are doubtful and require historical investigation to explain them. If the words are really and fairly doubtful, then, according to well-known legal principles, and principles of common sense, historical investigation may be used for the purpose of clearing away the doubt which the phraseology of the statute creates. But, upon looking at these words, I think there is no such doubt created by the phraseology. We have to deal here with a publication proved by the evidence at the trial to have been written by the defendant, to have been printed by the order of the defendant and paid for by him, sold by the defendant, called by the defendant his article, and intended, as the jury have found, and most rea-

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sonably found, to be read by the twelve hundred or more persons who were the subscribers to, or the purchasers of, the *Freiheit* newspaper; and, further, one which the jury have found, and I am of opinion have quite rightly found, to be naturally and reasonably intended to incite and encourage, or to endeavour to persuade, persons who should read that article to the murder—either of the Emperor Alexander or the Emperor William, or, in the alternative, the crowned and uncrowned heads of States from Constantinople to Washington, as it is expressed in one part of the article. The question, therefore, simply is on those facts which are undisputed, and with regard to which the jury have pronounced their opinion, Do those facts bring it within these words? I am of opinion they clearly do. An endeavour to persuade or an encouragement is none the less an endeavour to persuade or an encouragement because the person who so encourages or endeavours to persuade does not, in the particular act of encouragement or persuasion, personally address the number of people, the one or more persons, whom the address which contains the encouragement or endeavour to persuade reaches. The argument has been well put, that an orator who makes a speech to two thousand people, does not address it to any one individual amongst those two thousand—it is addressed to the number. It is endeavouring to persuade the whole number, or large portions of that number, and if a particular individual amongst that number addressed by the orator is persuaded, or listens to it and is encouraged, it is plain that the words of this statute are complied with; because, according to well-known principles of law, the person who addresses those words to a number of persons must be taken to address them to the persons who, he knows, hear them, who he knows will understand them in a particular way, do understand them in that particular way, and do act upon them. The case of *Gerhard v. Bates* (5) is a clear authority as to that. There are authorities to be found elsewhere to the same effect, that

a circular (6) addressed to the public containing false statements, reaching one of the public, not as an individual picked out, but as one of the public it was intended it should reach, who is influenced by the statements in that circular to his disadvantage, and who is injured by them, has good ground for a personal action for damages occasioned by the statements in that circular against the person who has issued it to the public, the reason being that the recipient of the circular is one amongst the number of persons to whom it is issued, and he has been injured by the statements contained in it. So here, it seems to me that this is not the less an endeavour to persuade, or an encouragement to murder, either named individuals or unnamed individuals, because it is under another aspect of the law—a seditious and scandalous libel. On the whole, I am clearly of opinion, on the words of the statute and upon the authorities which have been cited, that the direction given at the trial is correct, and the conviction right, and that it should be affirmed.

GROVE, J.—I am of the same opinion. The words of the Act, so far as they are material to this case, are, "Whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person, to murder any other person, whether he be a subject of Her Majesty or not, and whether he be within the Queen's dominions or not, shall be guilty of a misdemeanour." I think there can be no doubt that those words taken alone apply, at all events personally, to more than one particular person. I do not think it could be argued that if a person, instead of encouraging or endeavouring to persuade one person, endeavoured to persuade two persons or three persons, that would not be within the Act, because in endeavouring to persuade two or three persons he endeavours to persuade each of those two or three persons. Then, to go a step further, supposing he addresses eight or ten persons, and says, Now I recommend any one of you who has the courage to do it, to murder so-and-so, and you will gain so-and-so by it—or uses

(6) See *Peck v. Gurney*, 43 Law J. Rep. Ohanc. 19; Law Rep. 6 H.L. 377, 397; *Scott v. Dixon*, 29 Law J. Rep. Exch. 624.

(5) 2 E. & B. 476; 22 Law J. Rep. Q.B. 364.

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other words, either by way of argument or by way of promise, to induce some one or more of those persons to murder another—surely that would be encouraging a person or persons—that is, each and every one of those persons—to murder. Then, supposing it is not done by word of mouth, but that a person writes it in a letter to an individual person, can it be said that it is not wholly within the words of this section? It appears to me it is absolutely within them. It is a direct encouragement to a person to murder. Then if he goes further, and, instead of writing one letter, he writes ten or twenty letters, and distributes them to persons whom he thinks they may have an effect upon, or the first twenty who come, does not he then encourage each of those persons to commit a murder? Then, to go a step further, if he prints a circular of the same character as a letter, and hands that to twenty, or more than twenty persons, is not that an encouragement to everyone of those twenty persons to commit a murder? Does he lessen the offence by increasing the number of persons to whom he publishes or transmits this encouragement? Then, can it be said that the printing of a paper and circulating it to a definite body of subscribers, as was done here, or to all the world, does? It is beyond my comprehension to see that that can alter the fact at all. It seems to me, first, it is clearly within the words of the statute; and, secondly, that, so far from extenuating—I do not mean in the sense of punishment, but diluting the offence—it increases it, because he not only endeavours to persuade a person to commit the offence, but a considerable number of different persons, each of whom is “a person.” It appears to me, therefore, that it is literally and clearly within the words of the statute, which are “persuade any person,” and it does not the less do that because it persuades or endeavours to persuade, or encourages separately, a considerable number of persons.

Then it is said that this section is to some extent the same—the words are almost the same—as the previous Irish Act of the 38 Geo. 3. c. 57, which was an addition to or an amendment of a pre-

vious Act, relating to conspiracies, and there is no doubt that this Act of 38 Geo. 3 does primarily, by the preamble, appear to relate to conspiracies, because, after reciting the previous Act of the 36 of Geo. 3. c. 27, whereby it was enacted that persons who should by course of law be convicted of conspiring, confederating or agreeing to murder a person, should be adjudged felons, it goes on to a second recital, applying to the particular Act in question: “And whereas the said recited Act hath been found ineffectual for the punishment of the crimes of proposing to, soliciting and persuading others to enter into and engage in such conspiracies, be it therefore enacted, that any person or persons who shall propose to, solicit, encourage, persuade, or endeavour to encourage or persuade, any person or persons to murder any person, and shall be thereof by due course of law convicted,” &c. Now, there the word “conspiracy” does not occur, although it occurs in the preamble. Then it is argued that we are not to hold that the statute applies, unless there is a conspiracy—that is, unless there are two minds brought to bear on the subject; but the statute does not so state. It recites the ineffectual character of the previous statute, and says if anybody shall use encouragement—that is, initiate a conspiracy—even although the other person takes no part in it, he shall be guilty of felony.

But I do not require to enquire into the meaning of the Irish statute, because the words of the statute on which the conviction went are perfectly clear. There is no such recital therein as the second recital I have alluded to, but after having dealt with the question of a conspiracy clearly in one clause, it goes on, “and whosoever shall solicit, encourage, persuade or endeavour to persuade, or shall propose to any person to murder any other person, whether he be a subject of Her Majesty or not, and whether he be within the Queen’s dominions or not, shall be guilty of a misdemeanour.” There the Act severs and contra-distinguishes, if I may say so, the two offences—the conspiring on the one hand, and the encouraging or endeavouring to persuade

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on the other hand. The law has said, no doubt, in construing an Act of Parliament, where words are ambiguous, you may look to the previous statute to see the meaning, and to see what the object sought is and to fairly construe it; but here not only is there no ambiguity, but to my mind we are clearly told what the statute intends. Then as to the evidence. There is ample evidence here, not only of circulation to a number of persons, each of whom might be affected, but there is evidence in this case that one person was actually proved to have received the publication, and he might fairly be said to be "a person," just as much as if a letter containing the article had been handed him for his perusal. I do not think proof of such receipt by a particular person is necessary, but if it be necessary there is evidence of it. Therefore there was ample evidence to support the conviction; the direction was sufficient, and there is nothing here to enable me to say that the conviction should be quashed.

DENMAN, J.—It was candidly admitted by Mr. Sullivan, in the course of his able argument, that the sole question in this case is whether there was upon the facts which are here stated evidence to go to the jury that the defendant was brought within section 4 of 24 & 25 Vict. c. 100. And upon this point it was said for the defendant that it was not made out that he had encouraged or endeavoured to persuade any person to murder any other person. With regard to murdering any other person that point was not reserved. I think there was nothing to reserve about it, because I should draw the same conclusion which the jury did from the document itself—that it did contain an encouragement, or an endeavour to persuade, to murder the particular persons whose names are mentioned in it. But it is out of the case, and the only question is whether the words "any person" are met by the evidence in this case. I must own that if that question had been for the first time raised before me, as it was before my Lord upon the trial, my impression is strong that, looking at the importance of the case, and looking at the fact of the absence of any authority upon it in our Courts, I should, as my Lord did, have

thought it a proper case to reserve for the consideration of this Court. The question having been reserved, we have to consider whether there was here evidence to meet that part of the case. I think there was. The contention was that the statute did not intend to meet the case of a libel of this character, circulated, as libels are circulated, simply by the publication of a paper, and sending it to the subscribers, or allowing it to be circulated amongst the population. I agree with my Lord entirely that although this may be a mere publication of a libel, still if it is the publication of a libel of this character, and the libel does in itself amount to an endeavour to persuade all persons to whom it is sent to commit a murder, nevertheless it is doing an act intended to be legislated against by this clause, making it a misdemeanour of another character—a misdemeanour punishable by a more severe punishment than the ordinary circulation of a libel of that character would be.

The statute was passed for the very purpose, I think, of rendering it a more serious offence than the common law rendered it to do such an act as this. I need say no more than that I entirely agree with my Lord and my brother Grove on that point, but I do wish to add this: The doubt which I should have felt probably if it had come before me, was a doubt in accordance with Mr. Sullivan's argument, whether the words "any person" might mean some definite person. I should, however, have thought that if it had been made out that the libel had been circulated to a certain set of persons whose identity was easily ascertained, except only that their names were unknown, the clause would have been satisfied even if it meant some definite person. But I do not think that is the meaning. I think the circulation to the world, to multitudes of persons wholly undefined, and to whom it would come, would be sufficient; but what I wish to add is this, that even if the other construction were the true one, I should have been prepared to support the conviction on this ground, that many of these persons were in that sense definite persons. They were known subscribers in large

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numbers to this newspaper, and the man who edited the newspaper, the man who wrote the article, the man who sold the newspaper, and caused it to be distributed, did know that that newspaper would, in the ordinary course, come to its regular subscribers, at all events, whether it went to a larger portion of persons or whether it did not. Therefore, supposing it were necessary that the persons unknown should be in this case definite persons, ascertainable persons, persons who might be ascertained by enquiry, although unknown to the jurors at the time of their finding, I should have thought that in that sense the indictment was supported by the evidence.

HUDDLESTON, B.—The question submitted to us by the Lord Chief Justice is, whether his direction was correct in point of law; and that direction is this: He told the jury that if they thought that by the publication of the article the defendant did intend to, and did, encourage or endeavour to persuade any person to murder any other person, whether the subject of Her Majesty or not, and whether within the Queen's dominions or not, and that such encouragement and endeavour to persuade was the natural and reasonable effect of the article, they should find the prisoner guilty. Now I do not entertain the slightest doubt that that was really the only question which could be left to the jury, and that the evidence was ample to warrant their finding. The charge is founded directly on the words of the statute, and if you come to look at the words of the statute, the distinction which Mr. Sullivan has endeavoured to draw with reference to conspiracy really does not arise, because the section of the statute contemplates two classes of cases—one where there is a conspiracy and another where there is individual action.

As regards the second class, it is remarkable to see the words which the Legislature have used for the purpose of pointing out the act which makes the party liable. The largest words possible have been used: "solicit"—that is defined to be to importune, to entreat, to implore, to ask, to attempt, to try, to

obtain; "encourage," which is to intimate, to incite to anything, to give courage to, to inspirit, to embolden, to raise confidence, to make confident; "persuade," which is to bring to any particular opinion, to influence by argument or expostulation, to inculcate by argument; "endeavour," and then, as if there might be some class of cases that would not come within those words, the remarkable words are used, "or shall propose to"—that is to say, make merely a bare proposition, an offer for consideration. It is to be a misdemeanour of a highly criminal character to solicit, to encourage, to persuade, or even to propose to any person to kill any other person, whether one of Her Majesty's subjects or not. Mr. Sullivan has argued that you must have an immediate connection between the proposer, the solicitor or the encourager, and the person who is solicited, encouraged, persuaded or proposed to, and that it is not sufficient to solicit generally—that you must solicit some person in particular. But what was the intention of this Act? The intention was to declare the law, and to protect people abroad from the attempts of regicides of this description, and therefore the largest possible words are used. It shall be criminal, not to persuade an individual, but to persuade "any person;" that is to say, the public crowds who may hear it if it is an oration, or who may read it if in a newspaper.

The case of *Poole v. Sacheverel* (7) is not inapplicable to the present one. There was a question of a disputed marriage, and the father, who was interested in the marriage, put an advertisement in the newspapers offering a reward of a 100*l.* if any person could come and give evidence of that marriage. It was suggested that the object was to render impure the sources of justice, to bribe some people to give improper evidence; and the party was brought up for contempt before Lord Chancellor Parker, but it was urged on his behalf that nothing had been done in consequence of the advertisement. No witnesses had come.

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But the Lord Chancellor said, "It does not appear that some person would not come in if this were not discouraged; however, the person moved against has done his part, and if not successful is still not the less criminal." The counsel objects that it is not to any particular person. "It is equally criminal when the offer is to any, for to any is to every particular person. The advertisement will come to all persons—to rogues as well as to honest men; and it is a strange way of arguing to say that offering a reward to one witness is criminal, but that offering it to more than one is not so. Surely it is more criminal, as it may corrupt more." If you hold an offer out to the public—an invitation to come and give perjured evidence—that is as much a criminal act as to request an individual to do so; just as it is here criminal to publish to the whole world that the individual rejoices in regicide and recommends others to follow his example, and trusts that the time is not long distant when once a month kings may fall. This article was an encouragement to the public—a solicitation and encouragement to any person who chooses to adopt it, and comes within the meaning of the Act. I am perfectly satisfied with the conviction, and think it was right.

WILLIAMS, J.—I am of the same opinion. The jury have found the defendant guilty, and upon the narrow question of law which has been reserved for the consideration of this Court, it seems to me the conviction ought not be interfered with.

Conviction affirmed.

Solicitors—The Solicitor to the Treasury, for the prosecution; H. E. Kisbey, for the defendant.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { THE QUEEN v. THE JUSTICES
June 21. { OF HERTFORDSHIRE. In re
 WROUGHTON AND ANOTHER.

Licensing Acts, 1828 (9 Geo. 4. c. 61), s. 14—1874 (37 & 38 Vict. c. 49), s. 15—Conviction of Licensed Person—Application by Owner for Authority to carry on Business—Discretion of Justices at Special Sessions to refuse.

Under the Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 15, application was made at special licensing sessions by the owner of a beerhouse, licensed continuously from a date anterior to 1869, the tenant of which had been convicted of felony, for the grant of a licence in respect of the same premises. The Justices refused the application on the ground that the house was of a disorderly character:—Held, that the Justices at special licensing sessions, as well as the Justices at the general annual licensing meeting, had discretion so to refuse the application.

The Queen v. Rowell (41 Law J. Rep. M.C. 175; Law Rep. 7 Q.B. 490) followed.

This was a rule calling upon four Justices of Hertfordshire to shew cause why a *mandamus* should not issue commanding them to hold an adjournment of special sessions for licensing purposes held by them, at Hemel Hempstead, on the 11th of May, 1881, and proceed to hear and determine an application by E. N. Wroughton and C. Threlfall for a licence to sell beer to be consumed on or off the premises known as the "Joiners' Arms," Cholesbury, pursuant to section 15 of the Licensing Act, 1874 (1).

(1) The Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 15, enacts: "Where any licensed person is convicted for the first time of any one of the following offences:—

"1. Making an internal communication between his licensed premises and any unlicensed premises;

"2. Forging a certificate under the Wine and Beerhouse Acts, 1869 and 1870;

"3. Selling spirits without a spirit licence;

"4. Any felony;

and in consequence either becomes personally disqualified or has his licence forfeited, there may be made by or on behalf of the owner of the premises an application to a Court of summary jurisdiction

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The material facts appearing were as follows: E. N. Wroughton and C. Threlfall, of the Walton Brewery, Aylesbury, were the owners of the Joiners' Arms beerhouse, at Cholesbury, which had been continuously licensed as a beerhouse for the sale of beer on and off the premises from a date anterior to the year 1869.

On the 16th of March, 1881, Charles Parsley, the tenant of the beerhouse, was convicted of felony. Parsley then held a

for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a licence in respect of such premises; and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act, 1828, with respect to the grant of a temporary authority and to the grant of licences at special sessions, shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee."

The Intoxicating Liquor Licensing Act, 1828 (9 Geo. 4. c. 61), s. 14: "If any person duly licensed under this Act shall (before the expiration of such licence) . . . be by sickness or other infirmity rendered incapable of keeping an inn, . . . it shall be lawful for the Justices assembled at a special session . . . to grant . . . to the assigns of such person . . . a licence to sell exciseable liquors by retail to be . . . consumed in such house or the premises thereunto belonging: . . . provided always that every such licence shall continue in force only . . . until the fifth day of April or the tenth day of October then next ensuing, as the case may be: provided also that every person intending to apply . . . at any such special session for a licence to sell exciseable liquors by retail to be . . . consumed in a house or premises . . . in which exciseable liquors shall not have been so sold . . . by virtue of a licence granted at the general annual licensing meeting next before such special session shall . . . affix on the door of such house and . . . of the church, &c., such . . . notice as is hereinbefore directed to be affixed by every person intending to apply at the general annual licensing meeting for a" retail licence in respect of "a house not theretofore kept as an inn, and shall" serve copies of such notice in like manner.

5 & 6 Vict. c. 44 (included in the expression "the Intoxicating Liquor Licensing Act, 1828," by section 74 of the Licensing Act, 1872, with which latter Act the Licensing Act, 1874, is by section 1 to be construed as one), by section 1, gives a certain power to Justices in petty session to grant, by way of transfer, an authority, continuing only until the next special sessions, in cases where Justices in special session are empowered by 9 Geo. 4. c. 61 to transfer licences before their expiration.

licence under the Licensing Acts, 1872 and 1874, originally granted to him about five years before, and granted to him by way of renewal, in accordance with those Acts, at the general annual licensing meeting at Great Berkhamstead, in September, 1880. Parsley had not been previously convicted of felony or of any offence under the said Licensing Acts.

On the 20th of April, 1881, application was made at petty sessions, on behalf of the said owners, for authority to carry on the same business on the same premises under the above-mentioned section of the Licensing Act, 1874 (1). The consideration of the application was adjourned to Hemel Hempstead on the 11th of May, 1881, on the ground that the conviction of Parsley had not been proved.

On the 11th of May, 1881, application was made on behalf of the said owners to Justices in special sessions for licensing purposes at Hemel Hempstead (being the four Justices to whom the present rule was directed) for the grant of a licence to them, or one of them, in respect of the said premises, under the said section.

On the hearing of the last-mentioned application, it was proposed on behalf of the owners to satisfy the Justices that they were fit and proper persons to have the grant made to them, or one of them, but the Justices declined to entertain the question whether they were or were not fit and proper persons.

The Justices admitted in evidence, in opposition to the application, a memorial from certain persons praying that the licence might not be granted, on the alleged ground that during the tenancy of Parsley persons of disorderly character had frequented the premises; and, in support of this allegation, they admitted the evidence of a police constable, who stated that he had on various occasions seen persons at the said beerhouse who had been subsequently convicted of offences, all of which occasions and convictions were anterior to the general annual licensing meeting in September, 1880. Such evidence was objected to on behalf of the owners as irrelevant to the enquiry proper to be made upon such application.

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After hearing such evidence the Justices refused the application for a licence, and gave as the ground of their refusal that the house was of a disorderly character.

By reason of such refusal the beerhouse was closed.

Horace Brown shewed cause.—The question is, whether Justices have discretion to refuse the grant of a licence to an owner of licensed premises applying for it under the Licensing Act, 1874, s. 15 (1), upon conviction of his tenant for one of the offences mentioned in that section. The Justices have such discretion. It has already been held that they have discretion to refuse (and to refuse notwithstanding fitness of the applicant) the grant of a licence under 9 Geo. 4. c. 61. s. 14 (1)—*The Queen v. Rowell* (2).

He also referred to 5 & 6 Vict. c. 44. s. 1 (1).

Wightman Wood, in support of the rule.—The Justices in special session had not the supposed discretion to refuse the grant of the licence. Such a discretion, being a discretion to refuse the grant of a licence in respect of premises previously licensed, can only be exercised at the general annual licensing meeting. This was not an application for "a new licence"—37 & 38 Vict. c. 49. s. 32 (substituting a slightly altered interpretation for the interpretation in 35 & 36 Vict. c. 94. s. 74, repealed by 37 & 38 Vict. c. 49. s. 33)—nor an application within any of the specified cases in which discretion to refuse is given. If the contention on the part of the Justices is correct, they might have refused the application on any ground which seemed to them sufficient; but that is clearly contrary to the policy of the Licensing Acts. (See 32 & 33 Vict. c. 27 (the Wine and Beerhouse Act, 1869), s. 19, and 33 & 34 Vict. c. 29 (the Wine and Beerhouse Amendment Act, 1870), s. 7.) Notice of intention to apply is not required by 37 & 38 Vict. c. 49. s. 15 or 9 Geo. 4. c. 61. s. 14 in such a case as the present, though

expressly required in other circumstances; and that is very strong to shew that the Justices have not the discretion claimed. Under 9 Geo. 4. c. 61. s. 4, enacting that at special sessions, appointed as there mentioned, "it shall be lawful for the Justices . . . in the cases and in the manner and for the time hereinafter directed to licence such persons intending to keep inns, theretofore kept by other persons being about to remove from such inns, as they the said Justices shall in the execution of the powers herein contained and in the exercise of their discretion deem fit and proper persons . . . to be licensed to sell exciseable liquors by retail to be . . . consumed on the premises," it is still more clear than under section 14 of the same Act that the Justices have no discretion save as to the fitness of the applicant; and that section, though it may not in terms apply to the present case, shews how section 14 should be construed.

He referred also to 35 & 36 Vict. c. 94. s. 42.

GROVE, J.—I am of opinion that this rule must be discharged. The matter depends upon the construction of 37 & 38 Vict. c. 49. s. 15 (1). Previously to the passing of that Act an owner had no such power as is thereby given him of applying for leave to carry on the business theretofore carried on upon the licensed premises when his tenant has either become personally disqualified or has forfeited his licence. But that section enacts—[the learned Judge read it]. It is clear to my mind that under that section the Justices are not deprived of discretion to refuse the application. Mr. Wood prays in aid the 9 Geo. 4. c. 61. s. 14 (1), which is referred to in the enactment directly in question; but there also I think there is nothing to take away the Justices' discretion.

LINDLEY, J.—I am of the same opinion. The question turns upon 37 & 38 Vict. c. 49. s. 15 (1), and 9 Geo. 4. c. 61. The enactment under which the application was made to the Justices (37 & 38 Vict. c. 49. s. 15) (1) does not expressly say what the Justices are to do upon the

(2) 41 Law J. Rep. M.C. 175; Law Rep. 7 Q.B. 490.

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application which the owner is by that section authorised to make to them, but refers for that purpose to the 9 Geo. 4. c. 61. Each section in that Act to which reference could possibly be made, in support of the application in the present case, seems to me to leave the Justices discretion to refuse the application made to them. Section 14 has been already judicially held to give such a discretion—*The Queen v. Rowell* (2). We should, I think, be putting too narrow a construction on the enactments in question in this case if we were to say that the Justices at special sessions have less discretion to refuse the grant of a licence than they would have at the general annual licensing sessions.

STEPHEN, J.—I am of the same opinion. The question turns on 37 & 38 Vict. c. 49. s. 15 and on 9 Geo. 4. c. 61. s. 14, which it supplements, and to which it refers. The 9 Geo. 4. c. 61. s. 14 has already been held in *The Queen v. Rowell* (2) to grant a discretion to the Justices, and I should myself have so held. If the Justices have a discretion under 9 Geo. 4. c. 61. s. 14, it seems to follow that they have it also under 37 & 38 Vict. c. 49. s. 15, in which there is nothing to take it away. I do not feel pressed by any of the arguments adduced in favour of a contrary conclusion.

Rule discharged with costs.

Solicitors—E. Bevir, agent for A. W. Vaisey, Tring, for applicants; Andrew Wood & Co., agents for Grover & Son, Hemel Hempstead, for Justices.

[IN THE QUEEN'S BENCH DIVISION.]

1881. } PEARSON (appellant) v. HEYS
June 28. } (respondent).

Bastardy—Affiliation Order—Limiting Duration of Order—Marriage of Mother—35 & 36 Vict. c. 65 (the Bastardy Laws Amendment Act, 1872), ss. 4 and 5.

An affiliation order, in respect of a bastard child born after the passing of 35 & 36 Vict. c. 65 (the Bastardy Laws Amendment Act, 1872), contained, as drawn up, words whereby the weekly payment thereby ordered to be made by the putative father to the mother was to cease on marriage of the mother. The mother afterwards married, and the putative father thereupon discontinued the payment. Justices, upon complaint by the mother, under 35 & 36 Vict. c. 65. s. 4, made an order for recovery of the payment:—Held, that such order was wrong, on the ground that the affiliation order as drawn up was alone to be looked to, and that the Justices who made the affiliation order had discretionary power to limit the payment to the period to which the order, as drawn up, limited it.

CASE stated under 20 & 21 Vict. c. 43, by Justices of Lancashire.

At petty sessions, holden at Haslingden, on the 9th of May, 1881, upon hearing a complaint preferred by the respondent (Dinah Heys) against the appellant (James Pearson), under 35 & 36 Vict. c. 65. s. 4, charging that the appellant had neglected to pay to the respondent the sum of 5l. 4s. for arrears under a bastardy order, the Justices directed the said sum to be recovered by distress and sale of the appellant's goods. But upon the application of the appellant this Case was stated. The facts as stated in the Case were as follows:—

On the 16th of June, 1873, an order in bastardy was made upon the application of the respondent (then Dinah Yates, a single woman) against the appellant, adjudging him to be the putative father of a child of the respondent, born on the 21st of May, 1873. The order, as orally pronounced, directed that the appellant should pay to the respondent the sum of 4s. weekly, until the child should be six-

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teen years of age. In drawing up the order a printed form was used such as had been in use before the passing of 35 & 36 Vict. c. 65, and, in consequence, the order, as drawn up, contained after the words "until the said child shall attain the age of sixteen years," the words "or the said Dinah Yates shall marry." On the 23rd of March, 1879, the respondent married, and the appellant thereupon refused to continue the payment. At the hearing of the complaint, it was contended on the part of the appellant that the affiliation order as drawn up must be taken as being the order intended to be made, and further that the Justices had discretionary power under 35 & 36 Vict. c. 65 to direct that the payments should cease on marriage of the respondent. On the part of the respondent it was contended that the limitation which the Justices had not authorised must, as unauthorised, be disregarded, or, if necessary, the order must be amended, and also that the Justices had no power to impose such limitation, and the order must therefore as to that limitation be treated as bad. The Justices were of opinion that, the limitation in question having been inserted by mistake, they should be justified in disregarding it, and were further of opinion that there was no power to insert such a limitation, and that the order was, as to such limitation, bad, and gave their determination against the appellant. The question for the Court was, whether such determination was correct.

French, for the appellant.—The Justices had no power to disregard the limitation in the affiliation order as drawn up, whereby the payment was to continue only until the mother should marry. Such a limitation is not prohibited by 35 & 36 Vict. c. 65, and even if such a limitation cannot lawfully be imposed, the Justices had no power to disregard it, and to treat the order as if it had contained no such limitation.

Macleod, for the respondent.—The limitation in the order as drawn up was rightly disregarded. The oral pronouncing of an order by Justices rather than its formal drawing up constitutes the order—*Ex*

parte Johnson (1); and a mistake in the drawing up of an order may be corrected without a fresh summons—*The Queen v. Laming* (2). Even apart from mistake in the drawing up of the order the limitation was rightly disregarded; for the limitation, if bad, might be treated as surplusage—*The Queen v. The Inhabitants of Winster* (3) and *The Queen v. Green* (4), and the limitation was bad. The provisions of 35 & 36 Vict. c. 65 are inconsistent with power in the Justices so to limit the duration of the order. The proviso to 7 & 8 Vict. c. 101. s. 5, whereby an order for the maintenance of a bastard child was to cease upon the marriage of the mother, is repealed by 35 & 36 Vict. c. 65. s. 2. sched. 1, and that part of the proviso is not re-enacted. It has been decided that the marriage of the mother does not now prevent an order from being enforced in her favour—*Southeran v. Scott* (5); and the Act not only does not give the Justices discretionary power to say that an order shall not be enforced after the marriage of the mother, but evidently contemplates that they are not to have any such power. Whatever observations may have been made in *Stacey v. Lintell* (6) by Lush, J., to the effect that Justices have such discretionary power, were mere *obiter dicta*.

French was not called upon to reply.

POLLOCK, B.—I do not feel much difficulty in deciding this case. I am always glad to be able to give effect to the substance of an order, when its form may more or less conflict with its substance. But we are bound at the same time to look to the terms of the order. The order is an order upon the appellant to pay to the respondent the sum of 4s. weekly, until the child shall attain the age of sixteen years, or the respondent shall marry. It has been contended on the part of the respondent that the order orally pronounced is the actual order, but that

(1) 3 B. & S. 947; 32 Law J. Rep. M.C. 193.

(2) 27 Law Times, N.S. 355.

(3) 19 Law J. Rep. M.C. 185.

(4) 20 *ibid.* 168.

(5) *Ante*, p. 56; Law Rep. 6 Q.B. D. 518.

(6) 48 Law J. Rep. M.C. 108; Law Rep. 4 Q.B. D. 291.

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is not so; and inasmuch as whatever power existed of amending the order as drawn up has not been exercised, the order as drawn up, which is perfectly clear in its terms, must alone be looked to. Then comes the second question—Is that order invalid?—had the Justices power to make it or had they not? The answer depends upon 35 & 36 Vict. c. 65. ss. 4 and 5. Section 4 enacts that the Justices in petty sessions, after adjudging the alleged father of a bastard child to be the putative father, may, if they see fit, having regard to all the circumstances of the case, proceed to make an order on the putative father for payment to the mother of a sum of money weekly not exceeding 5s., for the maintenance and education of the child; after which the section goes on to enact that if the application be made before the birth, or within two months thereafter, such weekly sum may, if the Justices think fit, be calculated from the birth of the child; and it further goes on to provide that arrears of payments due under any such order may, under a warrant of two Justices, be recovered by distress. Section 5, no doubt, says that no order for the maintenance and education of any such child shall, except for the purpose of recovering money previously due thereunder, be of any force after the child has attained the age of thirteen years, or after the death of such child, provided that the Justices may in the order direct that the payments shall continue until the child attains the age of sixteen years, in which case such order is to be in force until that period. There is, however, nothing to shew that the Justices may not limit the duration of the payment to a shorter period than the period which the Act allows, and there are many instances in which the absence of such limitation would operate undesirably. I am of opinion that the determination appealed from must be reversed.

MANISTY, J.—I am of the same opinion. I find no words in the Act to exclude the power of making an order limited to less than the period, whether of thirteen or sixteen years from the birth of the child, which the Act allows. Before 35 & 36 Vict. c. 65, by the proviso to 7 & 8 Vict. c. 101. s. 5, no order for the maintenance

of a bastard child had any force, except for recovering previous arrears, after the marriage of the mother; and I think that the repeal of that proviso, together with the non-reenactment of that part of the proviso, leaves it in the discretion of the Justices to say whether or no the payment is to continue after marriage of the mother. The written order is that which we must look to.

Determination reversed with costs.

Solicitors—Shaw & Tremellen, agents for Forshaw & Parker, Preston, for appellant; Clarke, Woodcock & Ryland, agents for J. O. Thomson, Haslingden, for respondent.

[CROWN CASE RESERVED.]

1881. }
May 21. } THE QUEEN v. FENNELL.*

Evidence—Confession, Admissibility of—Inducement or Threat.

The prosecutor, who employed the prisoner, having called him into a room, in the presence of a police inspector said, "He" (meaning the police inspector) "tells me you are making housebreaking implements; if that is so, you had better tell the truth, it may be better for you." The prisoner thereupon made a confession:—Held, that such confession was not admissible against the prisoner.

CASE reserved by the deputy chairman of the Surrey sessions.

The prisoner was convicted on an indictment which charged him with larceny as a servant.

He was convicted mainly upon admissions made by him in the presence of the prosecutor and inspector C. before he was charged.

The question upon which the Court were asked to give their opinion was, whether the admissions made by the

* *Coram* Lord Coleridge, C.J.; Grove, J.; Hawkins, J.; Lopes, J.; and Stephen, J.

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prisoner were properly received in evidence against him.

The following were the circumstances under which the admissions were made:—

Previously to being charged the prisoner was taken into a room with the prosecutor and inspector C.

The prosecutor then said to the prisoner, "He" (meaning C.) "tells me you are making housebreaking implements; if that is so, you had better tell the truth, it may be better for you."

The prisoner then made admissions which contributed materially to his conviction.

The point was then raised by the prisoner's counsel as to whether these admissions could, after what the prosecutor had said to the prisoner, be received in evidence.

The chairman decided that they might be received, on the ground that the words addressed to the prisoner by the prosecutor did not "import a threat of evil or a promise of good" and so render his statement inadmissible.

If the Court was of opinion that the admissions of the prisoner ought not to have been received, the conviction was to be quashed.

J. Mews, for the prisoner.—It is clear on the authority of decided cases that a confession made under the circumstances of the present case is inadmissible. In the case of *The Queen v. Baldry* (1), where all the cases with reference to the admissibility of confessions are reviewed, Pollock, C.B., says, "Where the admonition to speak the truth has been coupled with any expression importing that it would be better for him to do so, it has been held that the confession was not receivable, the objectionable words being that it would be better to speak the truth, because they import it would be better for him to say something. This was decided in *The Queen v. Garner* (2)." And in the case of *The Queen v. Jarvis* (3), Kelly, C.B., says, "The words, 'you had better tell the truth,' seem to have ac-

quired a sort of technical meaning, importing either a threat or a benefit."

The Queen v. Bats (4) and *The Queen v. Doherty* (5) are to the same effect. *The Queen v. Zeigert* (6) is against this view, but that was a decision of a single Judge, and shortly afterwards the same learned Judge was of a contrary opinion in *The Queen v. Jarvis* (3). *The Queen v. Reeve* (7) is distinguishable, for the words "as good boys" do not import a temporal benefit.

A. A. Pranker, for the prosecution.—The principle as to the admissibility of confessions is stated thus in vol. i. of *Burn's Justice of the Peace* (13th ed.), at p. 973: "The only questions in these cases are, Was any promise of favour, or any menace or undue terror made use of, to induce the prisoner to confess? and, if so, Was the prisoner induced by such promise or menace, &c., to make the confession attempted to be given in evidence, or was such promise or menace operating on his mind when he made it? If the Judge be of opinion in the affirmative upon both these questions, he will reject the evidence. If, on the contrary, it appear to him from circumstances, that, although such promises or menaces were holden out, they did not operate upon the mind of the prisoner, but that his confession was voluntary notwithstanding, and he was not biassed by such impressions in making it, the Judge will admit the evidence."

[*LORD COLERIDGE, C.J.*—In the chapter on evidence in *Russell on Crimes* (8), which was written by no less an authority than the late Sir E. V. Williams, I find it laid down that "a confession, in order to be admissible, must be free and voluntary—that is, must not be extracted by any sort of threat or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. . . . In determining whether a confession be admissible or not, the only proper question is, whether the

(4) 11 Cox C.C. 686.

(5) 13 *ibid.* 23.

(6) 10 *ibid.* 555.

(7) 41 Law J. Rep. M.C. 92; Law Rep. 1 C.C.R. 362.

(8) Vol. iii. bk. vi. c. iv. p. 441.

(1) 2 Den. C.C. 442.

(2) 1 *ibid.* 329.

(3) 37 Law J. Rep. M.C. 1; Law Rep. 1 C.C.R. 99.

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inducement held out to the prisoner was calculated to make his confession an untrue one. . . . As to what shall be considered as a promise or inducement, saying to the prisoner that it would be better for him if he did confess is sufficient to exclude the confession."]

The prisoner had not been given in charge when he made the admissions.

[LORD COLERIDGE, C.J.—Can it make any difference in principle whether the prisoner is in custody or not, if the statement is extracted by means improper in law ?]

J. Mews, in reply.—It is immaterial that the charge was not made until afterwards—*The Queen v. Luckhurst* (9). It is enough if the threat comes from one who is likely to prosecute.

LORD COLERIDGE, C.J.—We are all of opinion that this conviction cannot be sustained. It is perfectly well established by decided cases that this statement is inadmissible.

Conviction quashed.

Solicitors—The Clerk of the peace for the county of Surrey, for the prosecution; W. H. Fullagar, for the prisoner.

[IN THE QUEEN'S BENCH DIVISION.]

1881. } WHITE (*appellant*) v. THE JUSTICES OF COQUETDALE (*respondents*).
May 21. }
June 3. }

Licensing Acts — Death of Licensed Person during continuance of Licence — Expiration of Licence — Application to Special Sessions—9 Geo. 4. c. 61. ss. 4, 13, 14.

A, duly licensed under 9 Geo. 4. c. 61, intended to apply for a renewal of her licence at the general annual licensing meeting to be held by adjournment on the 2nd of October. On the 25th of September she received notice that the police would object on the ground of her age, and on the 27th of September she died. No notice was or could be

given by any person of application for a licence for the premises to be heard on the 2nd of October, and no licence was granted to any person on that day.

No application was made at the next special sessions on the 6th of November, but notice having been duly given at the following special sessions, on the 4th of December, W. did apply under section 14 of 9 Geo. 4. c. 61, as assignee of the heir of A, for a licence in respect of the premises.

*The Justices refused the application on the ground that they had no jurisdiction after the expiration of the time for which A's licence had been granted, namely, the 10th of October:—Held, on the authority of *Simpkin v. The Justices of Birmingham* (41 Law J. Rep. M.C. 102; Law Rep. 7 Q.B. 482) and *Ex parte Todd* (47 Law J. Rep. M.C. 89; Law Rep. 3 Q.B. D. 407), that the Justices were right.*

CASE stated under 20 & 21 Vict. c. 43 and 42 & 43 Vict. c. 49. s. 33.

Ann Knox, of Alnwick, was licensed to sell intoxicating liquors in a house called the "Grapes" Inn, and her licence expired on the 10th day of October, 1880.

The premises had been licensed for upwards of forty years. There was no conviction against the licence.

The annual licensing meeting for the above division was held on the 4th of September last, but in consequence of the pressure of other matters no licensing business was then done, and the meeting was adjourned until the 18th of September, and from that day to the 2nd of October last. On the 25th of September notice in writing was given to Mrs. Knox by the superintendent of police of his intention to object to renewal on the ground that she was, from age and want of proper assistance, not a proper person to hold a licence, but this matter was not gone into before the magistrates because Mrs. Knox died on the 27th day of September last. On the 2nd of October Messrs. Cockburn, brewers, the lessees of the licensed premises, without having given any notices, which was impossible, asked the magistrates if they could allow the licence to be issued in their names; but this the magistrates refused to do, stating that they would only grant a

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licence to some one occupying or being about to occupy the premises.

The sale of liquors was carried on in the house until the expiration of the licence on the 10th of October last, and no penalty is incurred by the heirs, executors, administrators or assigns of any licensed person in respect of such sales up to the next special sessions (35 & 36 Vict. c. 94. s. 3).

On the 6th of November last, which was the next special sessions for the transferring of alehouse licences, no application was made respecting the above premises.

On the 13th of November last the appellant John White gave notice that he would at the following special sessions for the transferring of alehouse licences, on the 4th of December, 1880, make application under the provisions of 9 Geo. 4. c. 61. s. 14, for a licence to sell intoxicating liquors on the above-mentioned premises, upon the ground that the late tenant, Ann Knox, duly licensed, had died before the expiration of the licence, and that Thomas Crisp, the heir of the said Ann Knox, had made over his interest in the occupation and keeping of such premises to the said John White.

It was contended, on the part of the appellant, that he had brought himself within the provisions of the Act; that Mrs. Knox died before the expiration of the licence; that the heir had assigned over his interest to the appellant without delay; that the section gave the Justices full power to grant the licence to the appellant; that such licence would continue until the 10th of October next after the grant of such licence; that there was no special session before the 10th of October, 1880; and that, by reason of the act of God, namely, the death of Mrs. Knox, it was quite impossible to give the necessary notices before the 10th of October, 1880; and that to grant a licence which would expire on the 10th of October, 1880, would have been of little or no use, for what was wanted and intended by the Act was to grant a licence which would continue in the present case during the following year.

The Justices, however, considered that

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after the decision in *Ex parte Todd* (1), where it was said the new tenant spoken of in section 14 must come in during the continuance of the licence, they had no jurisdiction, and that the power of granting a licence under this section applied only to the period for which the former tenant's licence would have lasted; and that, at any rate, as there was time to do so, the application should have been made or the notice of the application given before the expiration of the old licence. They also considered that the heirs or executors of Ann Knox had not made over their interest in the occupation and keeping of the said house before the 10th of October, and that therefore no licence was in force when the assignment was made to the applicant. The Justices also relied on the case of *Simplein v. The Justices of Birmingham* (2), where it was decided that at all events the application must be made before the expiration of the licence, otherwise it would be impossible to know where to draw the line. (See also the case of *The Queen v. Taylor* (3) to the same effect.) The Justices, therefore, came to the conclusion that as no step whatever had been taken during the currency of the licence, they had no jurisdiction to grant the application; but on the application of the appellant they state this Case for the opinion of the Court as to whether they had jurisdiction or not.

H. Manisty (on May 21), for the appellant.—As Ann Knox died on the 27th of September, and the licensing meeting was on the 2nd of October, no one could apply, because notice of application is necessary, and there was not sufficient time to give it—section 40 of 35 & 36 Vict. c. 94. The appellant might therefore go to the special sessions—*The Queen v. The Justices of Middlesex* (4).

This application was for a new licence, and could be granted under section 14 of

(1) 47 Law J. Rep. M.C. 89; Law Rep. 3 Q.B. D. 407.

(2) 41 Law J. Rep. M.C. 102; Law Rep. 7 Q.B. 482.

(3) 42 Law J. Rep. M.C. 13; Law Rep. 7 Q.B. 487.

(4) 40 Law J. Rep. M.C. 184; Law Rep. 6 Q.B. 781.

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the 9 Geo. 4. c. 61, which contemplates something different being granted from the old licence, and is not limited to mere transfers of existing licences. When granted it is to be in force till the next general annual licensing meeting. It is true that if immediately on the death of Ann Knox her heirs had given the twenty-one days' notice, which would have expired about the 19th of October, they would have been in time for application to be made at the special sessions on the 6th of November. The failure to do this did not oust the jurisdiction, if there was jurisdiction at all after the 10th of October.

[FIELD, J.—Can you distinguish the case from *Simpkin v. The Justices of Birmingham* (2), and *Ex parte Todd* (1)?]

In the former case the decision was only that the removal must be before the expiration of the licence. Here the death which gave title to the heir under section 14 occurred on the 27th of September. The licence was determined by death before its expiration. Then if, as here, there was no time to apply for a new licence in the interval, the licence would be gone for a whole year.

[BOWEN, J.—In *Todd's Case* (1) it is said that there is a hardship which the Act does not remove.]

That case could have been decided upon the authority of *Simpkin v. The Justices of Birmingham* (2) alone, and the observations of Cockburn, L.C.J., were not really necessary for the decision.

No counsel appeared for the Justices.

Our. adv. vult.

The judgment of the Court (5) was (on June 3) delivered by

FIELD, J.—This was a Special Case stated by Justices. The question for our decision arose in the following way: The appellant White applied to the Justices of the Eastern Division of Coquetdale, in Northumberland, under somewhat peculiar circumstances, for a licence. Ann Knox in September, 1880, was the holder of a licence for a public-house, which licence would, according to the general

law regulating the duration of licences, expire on the 10th of October following. The inspector of police had intimated to her that he thought that she was too old and infirm for it to be proper that her licence should be renewed by the Justices, and that he must make a report to that effect at the licensing meeting, which, by adjournment, was fixed to be held on the 2nd of October.

On the 27th of September, however, she died; and thus her licence was determined before its expiration. On the general licensing day, the 2nd of October, no application was made except one by the brewers for a licence, which obviously could be of no avail as they were not going to be occupiers of the house. At the next licensing special sessions on the 6th of November no application was made, but on the 14th of November the appellant gave notice that he would at the next special sessions apply for a licence, alleging himself to be the representative of the heir of Ann Knox. He accordingly applied, but the Justices refused on the ground that the application having been made after the 10th of October, they had no power to grant it, acting, as they said, and I think rightly acting, on *Ex parte Todd* (1). The way in which the application was framed made the question turn on the 4th and 14th sections of 9 Geo. 4. c. 61.

By the 4th section of that Act the Justices are to appoint not less than four nor more than eight special sessions to be holden in the division or place for which each such meeting shall be holden in the year ensuing the general annual licensing meeting, at which special sessions it shall be lawful for the Justices to license such persons intending to keep inns, theretofore kept by other persons being about to remove from such inns, as they (the Justices) shall deem fit and proper persons to be licensed. Then section 13 says every licence which shall be granted under the authority of this Act shall be in force from the 10th of October after the granting thereof for one whole year, and no longer. It is obvious, therefore, that every licence granted under section 4 or section 14 can only be granted for the special statutory period—that is, from the 10th of October after

(5) Field, J., and Bowen, J.

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the granting thereof for one whole year, and no longer. Therefore, if granted on the 10th of October, the licence would be for one whole year exactly, and if granted after the 10th of October it would be in terms for one year, but it would end on the next 10th of October, as it is essential that it should be for one year, and no longer. Then section 14 says that if any person duly licensed shall, before the expiration of such licence, die, it shall be lawful for the Justices at special sessions to grant to the heirs, executors or administrators of the person so dying, or to any person to whom such heirs, executors or administrators shall have *bona fide* conveyed their interest in the occupation or keeping of such house, a licence: provided that such licence shall continue in force only from the day on which it shall be granted until the 10th of October then next ensuing.

It is clear from the decision in *Simpkin v. The Justices of Birmingham* (2), that in order for the Justices to have jurisdiction under section 14 it is essential that at the time when the title of the applicant was created, under which he seeks to have a licence, the person to whom he succeeds must be a licensed person in the sense of holding an unexpired licence.

In *Simpkin's Case* (2) the former tenant remained in occupation after the 10th of October, so that at the time of his removal he was not a duly licensed person, the licence having then expired, and the title of *Simpkin*, therefore, had not accrued before the expiration of the licence. Then in *Ex parte Todd* (1) the principle was carried a little further. The facts were peculiar. It was a case of a licensed person giving up possession before the expiration of the licence and a series of new tenants coming in, the applicant doing so after the 10th of October, when the licence had expired.

The Judges in that case held the true meaning of the section to be that which I had argued in *Simpkin v. The Justices of Birmingham* (2) that it was. There was a general intention on the part of the Legislature to have one period throughout the country from which houses were to be licensed; and that was from the 10th of October in each year.

But it seemed that there might be an injustice done in keeping a house unlicensed for any length of time by reason of the death or bankruptcy of the occupier during the year; and so the Legislature provided for a series of events, upon which such an injustice might arise, and the Justices are directed to hold special sessions at which, if any of the events happened by which the licence would be determined before its expiration, the hardship might be met by the Justices granting licences till the 10th of October following and no further.

In *Ex parte Todd* (1) an interpretation was put upon section 14, and I cannot do better than read the judgment of the late Lord Chief Justice. He says, "I entertain no doubt whatever that the purpose of section 14 was to keep alive existing licences which had not run out by effluxion of time, where, owing to the death or bankruptcy of the tenant, the premises had become unoccupied, and so the licence useless. But I think that by providing for the special cases to which section 14 immediately refers, it was not intended to interfere with the general rule as to the expiration of licences. . . . The application must be during the pendency and currency of the period for which the old licence was in force. That period had expired before the application was made, and I am of opinion that the Justices had no jurisdiction." Mr. Justice Manisty expresses the same opinion in the same clear language, and I agree with him in thinking that *Simpkin v. The Justices of Birmingham* (2) was conclusive of the point. I think, too, that the Justices in the present case were right in saying that they were bound by those decisions.

There is at the same time an apparent injustice in depriving a house of its value as a licensed house, when it is difficult to say that the loss has arisen from the omission of any Act by which the licence might have been preserved, but it is one of those cases of hardship for which the Legislature has not provided. I cannot make the law, but must deal with it as it has been judicially elucidated.

There is one case which is seemingly at first sight rather in favour of the appel-

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lant—*The Queen v. The Justices of Middlesex* (4). It is not, however, really so when closely examined, and if it were it must be taken to be overruled by the later cases. I only mention it to shew that it has not escaped notice; but the present point was not raised or argued in it, and the judgment does not proceed on that ground.

I therefore hold that the Justices were quite right, and that they had no jurisdiction to grant the licence, and in this judgment my brother Bowen concurs.

Appeal dismissed.

Solicitors—Shum, Crossman, Crossman & Pritchard, agents for Middlemas, Alnwick, for applicant.

[IN THE QUEEN'S BENCH DIVISION.]

1881. } TAYLOR (appellant) v.
June 23. } ROGERS (respondent).

Wild Birds Protection Act, 1880 (43 & 44 Vict. c. 35), s. 3—*Foreign Bird—Exemption from Penalties.*

The Wild Birds Protection Act, 1880, s. 3, imposes a penalty on any person who shall shoot or take wild birds between the 1st of March and the 1st of August, or who "shall expose or offer for sale, or shall have in his control or possession after the 15th day of March, any wild bird recently killed or taken, . . . unless such person shall prove that the said wild bird was either killed or taken, or bought or received, during the period in which such wild bird could be legally killed or taken, or from some person residing out of the United Kingdom."

The appellant, a poulterer, was summoned, under section 3, for having in his possession and exposing for sale some wild birds, on the 18th of March, 1881. He proved that he had bought them from S., a salesman in Leadenhall Market, who had

bought and received them from a person residing out of the United Kingdom :—

Held, that the appellant had not brought himself within the exemption clause, which contemplated a direct purchase or receipt from a person residing out of the United Kingdom.

CASE stated by a Metropolitan police magistrate.

The appellant was convicted upon an information preferred by the respondent against the appellant, charging him with having in his possession and exposing for sale certain wild birds, upon the 15th of March, 1881, contrary to 43 & 44 Vict. c. 35. s. 3 (1).

On the 18th of March, 1881, the respondent saw hanging in the shop of the appellant, a poulterer, of Little Pulteney Street, fifty wild ducks exposed for sale, and was told by the appellant that they were Dutch and not British birds, and that they had been bought from one Sprigens, a salesman in Leadenhall Market.

The appellant proved that he had bought them from Sprigens, and Sprigens proved that he had bought and received them from one Jacob Brand, a dealer, in Holland, from whence they had been consigned to him (Sprigens).

On the part of the appellant it was contended that these birds were bought and received from some person residing out of the United Kingdom.

On the part of the respondent it was contended that these birds were not so received by the appellant, but were bought and received by him from Sprigens within the United Kingdom.

(1) By the Wild Birds Protection Act, 1880 (43 & 44 Vict. c. 35), s. 3, it is enacted that any person who, between the 1st day of March and the 1st day of August, in any year after the passing of this Act, shall knowingly and wilfully shoot, &c., any wild bird, or "shall expose or offer for sale, or shall have in his control or possession, after the 15th day of March, any wild bird recently killed or taken, shall, on conviction of any such offence," be liable to certain penalties in addition to the costs, "unless such person shall prove that the said wild bird was either killed or taken, or bought or received, during the period in which such wild bird could be legally killed or taken, or from some person residing out of the United Kingdom."

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The magistrate decided that the sale by Sprigens to the appellant did not come within the exception contained in the 3rd section of the Act, and fined the appellant twenty shillings and costs.

The question for the opinion of the Court was, whether, upon the above facts, the appellant was rightly convicted.

Petherum (*Littleton* with him), for the appellant.—This conviction was wrong, inasmuch as the appellant proved facts which duly exempted him from any penalty. The Act of 1872 (35 & 36 Vict. c. 78) contained a clause protecting persons in the case of birds "bought or received from some person or persons residing" out of the United Kingdom—see 35 & 36 Vict. c. 78. s. 2. Then came the Wild Fowl Preservation Act, 1876 (39 & 40 Vict. c. 29), which contained no such exemption, and, accordingly, under this statute, it was decided that it was no defence to shew that the bird had been imported from abroad—see *Whitehead v. Smithers* (2). In 1880 the Act (43 & 44 Vict. c. 35) under which the appellant was convicted was passed, in which the words contained in the original Act (35 & 36 Vict. c. 78) were re-inserted. The latter statute, it is contended, permits the sale of any wild birds at any time of the year, if the vendor can prove that such birds were bought or received from abroad, and was intended to do away with the restriction on the sale of foreign birds imposed by the Act of 1876. When the fact has once been proved of the purchase from abroad having been made, all subsequent dealings therewith are protected by the statute. The object of the 3rd section was to give the public the opportunity of obtaining a share of the immense quantities of wild fowl that are killed abroad after close time in England. If the magistrate has rightly construed the statute, then the exemption clause is absolutely useless, because "having in possession" any birds after the 15th of March is equally an offence; and, therefore, every

private person who has in his possession any of these birds is liable, unless he can prove that he, individually, got the birds from abroad.

Willis Bund, for the respondent, was not called upon to argue.

LORD COLERIDGE, C.J.—I am of opinion that this conviction was right, and must be affirmed. The words of the statute are not absolutely free from doubt, but, on the whole, I think they mean a direct purchase or receipt from a person out of the United Kingdom. I cannot understand how the word "received" can be adequately satisfied without a direct receipt. The receipt itself must clearly be from a person out of the United Kingdom, and if there must be a receipt, I do not understand how there can be a receipt except a direct receipt; and if the bird must be received from a person out of the United Kingdom, it seems to me to follow, that, taking the words "bought or received," the word "bought" must receive the same interpretation, and that there must accordingly be a direct purchase from a person residing out of the United Kingdom. Any other interpretation of the exemption clause would obviously open the door to all those frauds pointed out by the Common Pleas in the case which has been referred to.

MANISTY, J.—I am of the same opinion, and for the same reasons. The words "bought or received" at first sight seem somewhat ambiguous; but I take it the meaning of the proviso is, that there must be a direct receipt or buying.

Conviction affirmed.

Solicitors—R. & E. Bastard, for appellant; Alfred Lealie, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { THE SCHOOL BOARD FOR LONDON
June 21. { (appellants) v. JACKSON (re-
spondent).

Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3—Absence of Child from School—Residence apart from Parent—Liability of Parent.

The respondent, a widow, was summoned for neglecting, as a parent, to comply with an order to send her child to a certified efficient school. She pleaded poverty, and that, being quite unable to maintain the child, she had sent her to an aunt at Fulham. The respondent also stated that the child was sometimes sent to stay with another aunt. The magistrate dismissed the summons on the ground that it was not proved that the child was residing with and under the control of the respondent, and that 33 & 34 Vict. c. 75, s. 3, by which the term "parent" includes "every person who is liable to maintain, or has the actual custody of any child," contemplates that the liability should be with the person who had the actual custody of the child:—Held, that the magistrate was wrong, and that upon the above facts the respondent was liable to be convicted.

Quære, what would be the effect, if proved, of a permanent residence of a child apart from the parent?

CASE stated by Justices under 20 & 21 Vict. c. 43.

On the 16th of June, 1880, the magistrates made an order requiring Caroline Jackson to cause her child to attend the Board School in Hanan Street, Islington, a certified efficient school.

On the 3rd of November, 1880, a summons was applied for against the mother for neglecting without reasonable excuse to comply with the order. The defendant appeared and pleaded that she was very poor, that her daughter was between thirteen and fourteen, and that being quite unable to maintain her child she had sent her to an aunt at Fulham. She also stated that the child went sometimes to stay with another aunt. The magistrate dismissed the summons on the ground that it was not proved that the child was residing with and under the

control of the respondent, her mother. He was of opinion that section 3, defining "parent," did not contemplate that both the parent and the person having the actual custody of the child should be simultaneously liable to be convicted, and that the primary liability was with the person who had the actual custody of the child (1).

Jeune, for the appellant.—The magistrate was wrong in dismissing this summons. The respondent is liable to maintain and has the right to the custody of the child. She was bound to obey the order, and could not discharge herself from the obligation by permitting the child to leave her house. The child's aunt could not have been summoned for disobedience to an order made upon somebody else. The definition of the word "parent," while it includes every person who has the actual custody of the child, does not exclude the widowed mother, who is liable to maintain, and has the right to the custody of the child.

Nobody appeared for the respondent.

LOED COLERIDGE, C.J.—In my judgment the magistrate came to a wrong conclusion in this case. I do not propose to discuss how the matter might have stood under other circumstances; the only question for decision is whether, upon the facts as stated, the mother of this child was the "parent" within the meaning of the interpretation clause of the Act of 1870, and, as such, liable to be convicted by the magistrate. The Education Act was passed for the purpose of securing education to every child, and the statute intended to fix the responsibility on certain definite persons. *Prima facie* the onus is cast upon the parent; but the clause interpreting the word "parent" is so framed as to relieve in certain cases the father and mother from seeing to the education of a child, and to fix the responsibility on another or other persons. But this certainly is not such a case, and I entertain no doubt that the mother

(1) By the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3, "The term 'parent' includes guardian and every person who is liable to maintain or has the actual custody of any child."

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is the "parent" within the interpretation clause, and ought therefore to be convicted for the offence charged in the summons. The fact that the word "parent" includes other persons besides the father and mother does not appear to me to prevent its being applied in its natural and obvious sense when there is a parent capable of having such an order made upon her. The case must therefore be remitted to the Justices.

POLLOCK, B.—I am of the same opinion, and upon the same grounds. The Act of 1876 (39 & 40 Vict. c. 79), s. 11, clearly imposes a primary and affirmative duty upon the parent of a child, and in this case the respondent, as the mother of the child, was summoned for disobedience to an order made upon her as a parent. The latter part of the 11th section defines what shall be considered a reasonable excuse for a child not attending a public elementary school, but no such excuse can be pleaded here. All that is stated here is that the child sometimes went to stay with one or more aunts, which clearly does not relieve the mother from the obligation imposed by the statute. There are no materials here for raising the question what would be the position of affairs in cases where proof is given of a permanent residence apart from the parent. I express no opinion what my judgment would be in such a case as that, which is not raised here. The fact that under the interpretation of the word "parent" others are included besides the father and mother cannot avail or relieve the mother under circumstances such as these. Accordingly, I think that the magistrate came to a wrong conclusion.

MANISTY, J.—I concur. I desire to base my judgment upon the particular facts of the case, and give no opinion which way I should decide had it been proved, for instance, that the child had been living with a wealthy relative who had the permanent custody of her.

Case remitted.

Solicitors—Gedge, Kirby, Millett & Morse, for appellants.

[IN THE QUEEN'S BENCH DIVISION.]

1881. } RAMSDEN v. YEATES AND
March 28. } ANOTHER.

General Highway Act (5 & 6 Will. 4. c. 50. s. 54)—"Search for, dig and get in or through"—"Avenue to dwelling-house"—*Licence to get Materials for repair of Highway.*

The exception in section 54 of 5 & 6 Will. 4. c. 50 does not extend to carrying materials along an avenue, but is confined to getting materials in an avenue.

This was an appeal by way of Case stated by Justices for the county of Sussex against a licence granted to the respondents at a special sessions for highways held at Horsham for the division of Bramber in that county, to get and carry away materials for the repair of the highways in the parish, out of a meadow called the Barn Field, occupied by the appellant. It was proved that the materials, after having been obtained in the said Barn Field, would require to be carried along an avenue leading from the appellant's house to the highway, and this, the appellant contended, would amount to a search for, digging and getting materials in or through an avenue to a house, which is prohibited by the exception in the 54th section of the General Highway Act.

Dodd, for the appellant.—The true construction of the section is, that a licence cannot be granted to carry materials through any of the places mentioned in the exceptions in the section. "Get" refers to carrying as well as to digging. "Getting through" can only mean carrying through. The Barn Field is a paddock within the meaning of the exceptions, and therefore materials cannot be got in it.

Gore, for the respondents.—"Get" means "win," and has no reference to carrying away, which is provided for further on in the section. The carrying away is not dealt with except as to the amount of materials that may be taken. "Through" is not to be read with "get," but with "search for."

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LINDLEY, J.—In my opinion the respondents are right and the appellant is wrong. The question turns upon the true construction of the 54th section of the Highways Act (5 & 6 Will. 4. c. 50). The appellant's points, now, are two. He says that the place in question—which is called the Barn Field—is a paddock, in which these materials cannot be got. The answer to that is this: that point has never been taken at all; it is not disputed, and it has never been before the magistrates. I say no more about that. Whether it is a paddock or not I do not know. It has not been stated in the affidavit which has been put in by the appellant.

The next point is, that these materials, although got in this Barn Field, have to be got through—that is to say, carried away along—a certain road, which is an avenue. I will assume that it is an avenue. If that were material, the case would have to go back, because we cannot decide that by looking at the map at all. Assuming it is an avenue, we then come to this, which is the only question of law which presents any difficulty—whether carrying the materials got in the Barn Field along that avenue, or part of it, is a getting of the materials through the avenue as contended for by Mr. Dodd.

That question turns on the true construction of the section. Section 54 points to three things: it first of all points to getting the materials; secondly, it points to carrying away the materials; and thirdly, it points to compensation for the getting and carrying away. The first part, which is concerned with, and provides for, the getting, uses this language: "It shall be lawful," and so on, "for the surveyor to search for, dig and get materials in or through any of the several or enclosed lands or grounds of any person whomsoever, such lands or grounds not being a garden avenue to a house, lodge, park, paddock or enclosed plantation," and so on. Now the question is, whether getting the materials in one place, and carrying them along the road, is getting them through that road. It appears to me it is not. What exactly it means in connection with the words

"search for, dig and get," is a little obscure. You may search for them in or through. I do not think you want the word "through" if you have the word "search" in; neither do you want it for digging; neither do you want it for getting. It appears to me to point to this kind of thing—a searching and getting. These materials are stones; they may be picked up, for anything I know, on the surface; but you may have to search for them, and get them, and search for them in and through, and get them in and through, in that sense. It is evident to my mind that these words do not include carrying away. That is provided for in the next part of the clause, which runs thus: "To take"—that is to say, it shall be lawful for the surveyor to search for, dig and get materials—and then it runs on: "And to take and carry away so much of the material as by the discretion of the surveyor shall be thought necessary to be employed in the amendment of the highways." There the language is to take and carry away, and that is contrasted with the previous words, whatever they mean—"search for, dig and get materials." Then the compensation clause also uses the same contrast: "The surveyor making satisfaction for the materials which may be got or taken away, and also for the damage done to such lands or grounds by the getting and carrying away," and so on. It appears to me on the true construction, assuming this is an avenue, these materials are not being searched for, dug and got in or through that avenue. They are carried away (that is admitted) along the avenue, or part of it. That appears to me to be one of the things contemplated by the Act of Parliament. The appeal must therefore be dismissed.

MATHEW, J., concurred.

Judgment for respondents.

Solicitors—Speechley, Mumford & Co., agents for T. Bedford, Horsham, for appellant; E. W. & R. C. Mote, agents for J. F. A. Cotching, Horsham, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]

1881. }
 June 27. } SAUNDERS v. RICHARDSON.

Elementary Education Acts, 1870 and 1876—"Causing children to attend school"—Attending without Fee—By-laws of School Board.

A parent who sends his child to a board school to request admission and instruction, but without the school fees, does not "cause his child to attend school" within the meaning of a by-law of a school board requiring such attendance, or within the meaning of the Elementary Education Acts. The school board may proceed against the parent for an offence against the by-law, and are not bound to proceed for an offence against the Act.

Richardson v. Saunders (Ante, p. 65) overruled.

CASE stated under 42 & 43 Vict. c. 49. s. 33, in the matter of an information preferred by the appellant on behalf of the School Board of Belgrave, Leicester, under by-laws made under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), as amended by the Elementary Education Act, 1876 (39 & 40 Vict. c. 79). The information charged that the respondent being, on the 1st of March, 1881, the parent of a child, aged seven years, residing within the parish of Belgrave, and subject to the provisions of the Elementary Education Acts, wilfully did not cause the child to attend school as required by the by-laws.

The by-laws of the Belgrave School Board provide as follows: "The parent of every child not less than five nor more than thirteen years of age, shall cause such child to attend school unless there be a reasonable excuse for non-attendance. Any of the following reasons shall be a reasonable excuse, namely—(a) that the child is under efficient instruction in some other manner; (b) that the child has been prevented from attending school by sickness or any unavoidable cause; (c) that there is no public elementary school open which the child can attend within two miles from the residence of such child." In the by-laws the word "attendance" is defined to mean an attendance at a morning or afternoon meet-

ing, as defined by the Code of 1876. By the Code of Minutes of the Education Department, 1876, attendance at a morning or afternoon meeting may not be reckoned for any scholar who has been under instruction in secular subjects less than two hours, if above, or one hour and a half if under, seven years of age. The respondent had, pursuant to an attendance order made by the Justices on the application of the appellant, sent his child to the Belgrave Board School on and regularly since the 21st of August, 1880, to request that she might be admitted and instructed, and the child duly presented herself for that purpose. The child had been refused admission to the school in consequence of the respondent not having sent with the child the school fees payable by each child attending the school.

The Justices being of opinion that they were bound by the decision of the Queen's Bench Division between the same parties—*Richardson v. Saunders* (1)—dismissed the information.

The questions for the opinion of the Court were, first, whether the respondent had caused the child to attend school, as required by the by-laws of the board; and, secondly, whether, in view of the decision in *Richardson v. Saunders* (1) the respondent could be held responsible for the omission of the school board to give instruction to the child or to allow her to remain at the board school for the period of time stipulated for by the Codes of 1876 and 1878. The case came in the first instance before Coleridge, C.J., and Manisty, J., and was specially ordered to be argued before a Court of five Judges.

The Attorney-General (Sir H. James) (The Solicitor-General (Sir F. Herschell) and A. L. Smith with him), were for the appellant.—The present information is for not causing the child to attend school in pursuance of the by-laws of the board. The previous case of *Richardson v. Saunders* (1) was decided upon an information for not causing the child to attend in pursuance of an attendance order of Justices. There is, however, no

(1) *Ante*, p. 65.

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distinction in principle between the two cases, and that case was, it is submitted, wrongly decided.

After referring to and commenting on the sections of the Acts, he was stopped by the Court.

Hensman, for the respondent.—The decision in the previous case of *Richardson v. Saunders* (1) governs the present. That case turned on the meaning of the words "cause to attend school," which is the same whether they occur in the by-law or the statute. That was a decision of the High Court binding on all other divisional Courts of the High Court, especially in a criminal case. The present is a criminal case, otherwise there would be an appeal to the Court of Appeal.

[LORD COLERIDGE, C.J., intimated that a majority of the Judges of the High Court, including the two Judges who decided the other case, authorised the Chief Justice to summon this Court.]

The previous case was rightly decided. There is no power given to the board to demand prepayment of the fees. The word "attendance" must be taken to be used in its ordinary sense. The school board have no discretion to proceed under the by-law, when the penal section of the Act has been contravened—*Ex parte The School Board for London; in re Murphy* (2).

The Attorney-General, in reply, cited the Elementary Education Act, 1880, s. 4, the second paragraph of which gets rid of the effect of *In re Murphy* (2).

LORD COLERIDGE, C.J.—We have to decide in this case a matter of importance to school boards throughout the country. Two questions are submitted to us—First, whether the respondent, under the circumstances, has caused his child to attend school as required by the by-laws; and, secondly, whether, after the decision in *Richardson v. Saunders* (1), the respondent could be held responsible for the omission of the school board to give instruction to the child, or to allow her to remain at the board school for the period of time stipulated for by the Codes of 1876 and 1878. The undisputed facts

(2) 46 Law J. Rep. M.C. 193.

are, that Richardson is a poor man, and it is admitted that he cannot and could not provide the necessary fees. It is found that he neither applied for the remission of the fees nor asked the guardians to pay them for him. An application was made for an attendance order to compel him to send his child to the school board school. He sent his child physically to attend, but as the rule in that district, sanctioned by the Education Department, was that fees should be paid in advance, the child attending without them was refused admission.

The by-law said to be contravened is as follows: "The parent of every child not less than five nor more than thirteen years of age, shall cause such child to attend school unless there be a reasonable cause for non-attendance." First, was there authority to make that by-law? The Act 33 & 34 Vict. c. 75. s. 74 provides that "every school board may, from time to time, with the approval of the Education Department, make by-laws . . . requiring the parents of children of such age, not less than five years nor more than thirteen years, as may be fixed by the by-laws, to cause such children, unless there is some reasonable excuse, to attend school." The child is between seven and eight years old, and within the terms of this section. The by-law was, therefore, made under the authority of the Act of Parliament. Has it been complied with? It defines "attendance" to mean attendance at a morning or afternoon meeting as defined by the Code of 1876. By that Code, a morning meeting is to last two hours and a half, and an afternoon meeting an hour and a half. In one sense the father did not cause the child to attend at all. The child did not attend at a meeting. She went to the door; but is that attending? The answer depends on the different sections. It may seem illogical to refer to the Act of 1876 to construe a by-law made under the Act of 1870, but the two Acts are to be construed together; so that whatever "attend" means in the Act of 1876 it means in the Act of 1870. What "attendance" means is to my mind clear. According to the 4th section of

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the Act of 1876, "it shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing and arithmetic, and if such parent fail to perform such duty he shall be liable to such orders and penalties as are provided by this Act." The orders are for enforcing the Act, and the penalties if they are disobeyed. By section 11, "if the parent of any child above the age of five years, . . . habitually and without reasonable excuse, neglects to provide efficient elementary instruction for his child," such child may be ordered "to attend some certified efficient school willing to receive him and named in the order, being such as the parent may select; or, if he do not select any, then such public elementary school as the Court think expedient." The duty is to make the child receive efficient elementary instruction. The evil is not receiving instruction, and the remedy is to attend school. The evil and remedy are co-extensive. The object is efficient elementary instruction. Is it so, to send a child to school, but so as not to receive instruction? I think the father has the means of satisfying the order read in that sense. The "reasonable excuse" for not making the attendance order in his case would be that he has applied for the remission of the fees and asked the guardians to pay them, but failed. That cause ought to prevent the making of the attendance order. The object is to see that the child has elementary instruction. If the parent neglects to provide it, the magistrates may make an order that the child shall attend school. They will not make the order if the parent has made all reasonable efforts. If he has not done so he is not discharged.

But it is objected that this information is under a by-law, and there is nothing in the by-laws as to payment of fees at all, and non-payment of fees is not provided for by the Act. Imposing fees is not one of the powers given to the school board by section 74 of the Act of 1870. What authority is there for these fees at all? By section 17, "every child attending a school provided by any school board shall pay such weekly fee as may be pre-

scribed by the school board with the consent of the Education Department," but if the board find the parent cannot pay there may be relief. Has the school board prescribed these fees? It is found that they were payable, which means payable by law. They are in fact parliamentary fees to be paid as conditions precedent to the child entering the school. The order means that the child shall be sent for instruction with the fees.

All the elements of this construction are substantially supported by the Acts of Parliament, but two cases remain to be considered. In *In re Murphy* (2) the expressions used by Chief Justice Cockburn tend to shew that there was rather an offence under the statute than under the by-law. The answer to the difficulty made of this case is that the Act of 1880 was passed subsequently to it. The other case is *Richardson v. Saunders* (1), which has led to the institution of this suit. I hope I am not going beyond my duty to observe that the new system has afforded something like the convenience of a rehearing. This case came on before my brother Manisty and myself, and was hardly distinguishable from the case cited. I did not think we ought to entertain the question then, but I consulted the members of the division, and a large majority thought there ought to be a rehearing. I think *Richardson v. Saunders* (1) not rightly decided. It was a conviction under section 12 of the Act of 1876, and the Judges held that physical attendance at the door of the school was sufficient. In my opinion, effective attendance—that is, attending to be instructed at a meeting—is what is intended. For the child to present itself at the door and walk away is not enough. If it were, the consequences would be serious. Anyone might send children to the school day after day, and they would come back uneducated. Unwilling parents would entirely set aside the Acts of Parliament. Whether the proceeding is under the Act or the by-law, the father would have been properly convicted. The Justices must deal with the matter on further consideration.

DENMAN, J.—I am of the same opinion, and will only add a few words. The case

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of *Richardson v. Saunders* (1) was, I consider, based on one error. My brother Lindley lays it down that the word "attend" has its *prima facie* meaning. I should think it clear, except that those learned Judges have taken another view, that the word "attend," with the context, is not mere physical attendance, but in such a manner as to be effective. According to my understanding, attending school does not mean what happened in this case. There is no excuse for what was done; and no effort made that the child should be educated, but the child was sent in the certainty that she would not be admitted.

POLLOCK, B.—I concur both in the conclusion and the reasoning of my Lord and my brother Denman. As to the payment of fees, it is argued that it must be looked at as a different thing from attendance. That view was adopted in *Richardson v. Saunders* (1), and my learned brethren were driven to say that there had been an omission in the Act, and that the only way of recovering the fees was by action. I cannot adopt that view, because in 1870 the Legislature was dealing with schools under the directions of the Privy Council, knowing that in all those schools payments were made weekly or daily. The 17th section of the Act of 1870 provides for the payment of such weekly fee—that is, in such manner as has been accustomed. This clears up any difficulty as to the duty of paying fees.

MANISTY, J.—I am of the same opinion. Both the Act authorising the by-law and the by-law use the words "attend school," not "at a school" or a school house. These are terms in common use, involving the payment of fees as a matter of course. It is unnecessary to consider whether *In re Murphy* (2) was correctly decided or not, as the Legislature by the Act of 1880 has given discretionary power to proceed for a breach of the by-law or for habitual neglect under section 11 of the Act of 1876.

WILLIAMS, J.—I am of the same opinion, but, considering the circumstances in which the case has been brought before the Court, I think it right to express my separate opinion. In order to cause a child effectually to attend school so as to

obtain the instruction given in the school, a parent may find it necessary to do a variety of things; and included in those things there is not only the causing of the physical presence of the child at the place where a school is held, but also paying or making provision for the payment of school fees, if any were required, or of its exemption from such payment; and if the parent fails in the performance of these or any of these conditions precedent, the result is that the child cannot and does not attend a school so as to obtain the instruction therein; and the question then arises, whether, if the parent omits or fails to fulfil and perform one of the essential conditions of admittance into the school, and attendance therein, and if, in consequence of such failure or omission, the attendance becomes abortive, and the child is not admitted to the instruction given in the school, can it be said in such a case that a parent has caused the child to attend school within the meaning of the by-law? I am clearly of opinion that it cannot. "To attend school" or "attendance at school" seems to me clearly to mean attendance in fact and efficiently in school, so as to receive the instruction given in the school, and is not satisfied by an abortive and ineffectual attempt to attend. This seems to be the plain and natural meaning of the words, and to give the words the narrower and more restricted meaning of mere physical attendance at the school door would, in my judgment, be to stultify the Act and render its provisions nugatory. Nor is there any hardship in this construction of the statute, because, if the parent can shew any reasonable excuse for not complying with this direction, then he can be excused, and no penalty will be inflicted upon him.

Judgment for appellant.

Solicitors—The Solicitor to the Treasury, for appellant; H. Montagu, agent for T. Wright Leicester, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]

1881.	}	DRAKE v. FOOTTIT.
March 22, 24.		DRAKE v. HANKIN.

Riot—Felonious Demolition of Houses—Liability of Hundred—7 & 8 Geo. 4. c. 31. s. 2.

Where rioters injure a house by breaking windows and shutters, without an intention to demolish it, the house is not "feloniously pulled down, demolished or destroyed, wholly or in part," so as to make the hundred liable for compensation under 7 & 8 Geo. 4. c. 31. s. 2. The fact that goods were stolen does not affect the question; but there must be either demolition or injury, with an intention to demolish, as distinguished from malicious injury.

CASES stated by Justices of Buckinghamshire under 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49. s. 33, in respect of the claims of the respondents Foottit and Hankin, for compensation from the hundred of Desborough for damage done on the 2nd of April, 1880, of which claims due notice had been given to the appellant, the high constable of the county.

The day in question was the polling day at the Parliamentary election for the borough of Great Marlow, in the hundred of Desborough. The declaration of the poll was made at about six o'clock, and shortly afterwards the crowd which had gathered began to break the windows of the hotel where the successful candidate was. After breaking all the windows and damaging the walls from the outside, the rioters proceeded to treat the adjoining houses similarly, saying that the town should be worse than Sodom and Gomorrah. Amongst them was the house of the respondent Foottit. They broke the windows of his house and damaged the slates, masonry and shutters. About ninety houses were attacked in this manner, until, at about nine o'clock, the Riot Act was read, shortly after which the rioters were charged by the police and special constables, and dispersed.

The house of the respondent Hankin, a tobacconist, was also attacked before the Riot Act was read. Windows were broken, and an inner wall injured by a stone thrown from without. One of the

mob announced that "all he wanted was tobacco and cigars," and goods worth 2l. were stolen from the window.

Upon this evidence it was contended before the Justices, on the part of the appellant, that the houses of the respondents had not been feloniously demolished, pulled down or destroyed, wholly or in part, within the meaning of 7 & 8 Geo. 4. c. 31. s. 2. The Justices, however, held that the houses had been so in part destroyed by persons riotously and tumultuously assembled together, and made an order on the treasurer of the county for 16l. compensation in favour of Foottit, and a similar order in favour of Hankin. The evidence was made part of the case, and the Court was asked whether the houses were feloniously in part destroyed within the meaning of the statute.

Bulwer (Bullock with him), for the appellant, contended that there was no evidence in law of feloniously in part destroying the houses. There must be an intention to demolish the house. He cited the cases referred to in the judgment, and also *King v. Chambers* (1).

Graham (Chambers with him).—The Justices have found all the facts necessary to enable the respondents to obtain compensation. In the cases cited the question was left to the jury. Those cases were decided in reference to repealed statutes. The rioters meant to do all the injury they could, and the Justices have found that their intention was felonious. In Hankin's case there was evidence of housebreaking or larceny.

Bulwer, in reply.

Our. adv. vult.

LINDLEY, J. (on March 24).—These two cases raise an important question with respect to the liability of the hundred to make good the damage sustained by Mr. Foottit and Mr. Hankin respectively in consequence of their houses having been more or less demolished, or injured, or wrecked in election riots. The injury done to the houses of these gentlemen was considerable. In Mr. Foottit's case there was no felony committed, unless the destruction of his house amounted to

(1) 4 Campb. 377.

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a felony. In Mr. Hankin's case some of his tobacco was stolen after his house was broken into and more or less destroyed. That is the distinguishing feature between the two cases, and we have to consider whether the hundred is liable for the damage so done. The destruction in both cases was before the Riot Act was read. It began at six o'clock in the evening; the acts of violence were committed between six and nine, and at nine o'clock the Riot Act was read.

By 7 & 8 Geo. 4. c. 30. s. 8, if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down or destroy, or begin to demolish, pull down or destroy, any house, every such offender shall be guilty of felony. That is a section to bear in mind when considering the section which throws the damage upon the hundred—namely, 7 & 8 Geo. 4. c. 31. s. 2—enacting that if any house shall be “feloniously demolished, pulled down or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together,” in every such case the inhabitants of the hundred shall be liable to make compensation. Under that section the proceedings before the magistrate were taken, and we have to consider the true construction of the words “if any house shall be feloniously demolished, pulled down or destroyed.” It is stated by the Justices, and it is beyond controversy in this case, that there were persons riotously and tumultuously assembled together. Then what is the meaning of the expression “feloniously demolish, pull down or destroy”? For the purpose of determining the true construction of that section regard must be had to the history of the Acts of this character, beginning with the Riot Act (1 Geo. 1. stat. 2. c. 5), which contains three sections of importance. The 1st, the 4th and the 6th sections made it a felony if persons to the number of twelve or more were riotously assembled and refused to disperse for an hour after the reading of the Riot Act. Section 4 made it a felony for persons tumultuously assembled to demolish or pull down a house. Section 6 made the hundred liable for injury done

to houses which were so demolished or destroyed. It was decided under that Act that there was no liability on the part of the hundred to make good damage done to houses unless the houses were feloniously demolished, or destroyed, or commenced to be feloniously demolished under section 4—*Reid v. Clarke* (2). Then it was decided further that there was no destruction or demolition which amounted to a felony within the Riot Act unless there was a total destruction, or the beginning of a total destruction—that is to say, unless there was some intent or purpose to destroy the house. The cases came to this, that if the mob attacked the house for the purpose of maliciously injuring, not destroying, it, and broke the windows and doors, that act alone was not only no destruction or commencement of destruction, but it was not an offence within the Act at all. There must be something more to shew that they intended to destroy; and if they left the house when they might have destroyed it, but did not, without being prevented, by the police or otherwise, the case was held not to come within section 4; that is to say, it was held there was no felonious attack upon the house. But if, on the other hand, they were proceeding to demolish it, and the evidence would have warranted the inference that they would have demolished it if not prevented, it was a commencement to demolish or destroy. The 7 & 8 Geo. 4. c. 27 repealed both the 4th and 6th sections of the Riot Act; that is to say, it repealed that section which made the demolition of the house felonious, and it repealed the section which threw upon the hundred the liability to compensate persons who were injured by that which amounted to a felonious demolition or destruction under section 4. The 7 & 8 Geo. 4. c. 30, by section 8, which I read just now, re-enacted in substance section 4 of the Riot Act. So that when we come to the statutes under which these proceedings are taken, there was a provision—namely, 7 & 8 Geo. 4. c. 30. s. 8—which made the destruction of the house or the demolition of the house, under the circumstances mentioned in that statute, felonious. There was also (and it

(2) 7 Term Rep. 497.

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is important to bear it in mind) another section—section 24—in the same Act which related to malicious injuries to property or houses as distinguished from felonious destruction or demolition. Then came the 7 & 8 Geo. 4. c. 31. s. 2, which re-enacted in substance the repealed section 6 of the Riot Act. In that state of law there was a series of important decisions which all seem to me to establish the same point or illustrate it, namely, *The King v. Thomas* (3), *The King v. Price* (4), *The King v. Bunton* (5), *The King v. Howell* (6) and *The King v. Adams* (7). Now the construction put upon the 7 & 8 Geo. 4. c. 30. s. 8 in all these cases is the same as had been put upon section 4 of the Riot Act, and it comes to this, that there is no felony committed under the 7 & 8 Geo. 4. c. 30. s. 8 unless there was demolition or destruction, or the commencement of a demolition or destruction, the purpose being to effect a complete demolition and destruction if there was no interruption.

That being the case, we pass on now to the statutes which were in force when this particular riot took place. Those are the 24 & 25 Vict. c. 97. s. 11 (which has in substance replaced the 7 & 8 Geo. 4. c. 30. s. 8, and relates to the felonious demolition or destruction of the houses) and the 24 & 25 Vict. c. 97. s. 12 (which relates to malicious injuries and damages to houses). If there is a demolition or destruction, or the commencement of a demolition or destruction, such as is mentioned in section 11, it is felonious by the Act. If what is done falls short of that point—that is, if there is injury or damage, without demolition or destruction, or any intent or purpose to demolish or destroy—the offence is a misdemeanour under section 12, but not a felony under section 11.

Viewed in the light of these considerations the difficulty seems to vanish. We now have to apply that state of the law to the 7 & 8 Geo. 4. c. 31, which throws upon the hundred the liability to

make compensation “if any house shall be feloniously demolished, pulled down or destroyed, wholly or in part.” Reading these words by the light of the history of the enactments and of the construction which has been put upon similar enactments in similar cases, it seems to me that in neither of the cases before us was there any demolition or commencement of demolition, pulling down or destruction, wholly or in part, which is felonious within the meaning of the 2nd section of the 7 & 8 Geo. 4. c. 31.

In Footitt's case there was really nothing but the injury to the house. That there was misdemeanour, in the sense of malicious injury, within the 24 & 25 Vict. c. 97. s. 12, is plain enough, but there was not a felonious demolition or destruction, in whole or in part, within the meaning of the statute.

In Hankin's case the conclusion is the same, notwithstanding the felony which took place when, after the house was broken open, without intent to destroy it or anything of that kind, some of the mob stole some tobacco. That act does not make the injury to the house a demolition or destruction, in whole or in part, within the 7 & 8 Geo. 4. c. 31. s. 2. It appears to me, therefore, that the Justices took an erroneous view, and that when the law is properly understood, there was no evidence to go to a jury, for that is the proper test of the question whether in point of law there had been a felonious destruction in whole or in part. The magistrates have stated the facts and they drew the inference that there was such a destruction as was felonious, and they therefore made an order upon the hundred. I am of opinion that the order was erroneous and that judgment must be given for the appellants in both cases.

MATHEW, J.—I agree.

Judgment for appellants.

Solicitors—King & McMillin, agents for Baynes, Aylesbury, for appellants; J. Rawson, Great Marlow, for respondents.

(3) 4 Car. & P. 237.

(4) 5 ibid. 510.

(5) 6 ibid. 329.

(6) 9 ibid. 437.

(7) Car. & M. 299.

[IN THE QUEEN'S BENCH DIVISION.]

1881. { THE GUARDIANS OF THE FULHAM
June 29. { UNION v. THE GUARDIANS OF
 { THE PORTSEA UNION.

*Poor—Settlement—Illegitimate Children
—Subsequent Marriage of Mother—Deriva-
tive Settlement—39 & 40 Vict. c. 61. s. 35
—Retrospective Effect.*

*The statute 39 & 40 Vict. c. 61. s. 35,
forbidding the derivation of settlements,
applies to illegitimate children who were
born before the passing of the Act, and
whose mother married before its passing,
so that they have the settlement of their
place of birth not of their mother's hus-
band.*

Appeal by Special Case from the order of the quarter sessions for the borough of Portsmouth, quashing an order for the removal of Maria Butler and Emily Butler from the Portsea Island Union to the Fulham Union.

The paupers, Maria Butler and Emily Butler, are the illegitimate children of Emma Maria Savage, now Burdett, who was at the time of the paupers' birth a single woman. The paupers were born in the parish of Portsea, within the Portsea Union—Maria on the 6th of January, 1866, and Emily on the 11th of May, 1868. The paupers have not since their birth acquired any settlement for themselves in their own right. The paupers' parent, Emma Maria Savage, was, on the 3rd of October, 1875, married to John Burdett, who was born on or about the 18th of November, 1850, at Bedford Place, in the parish of Fulham, within the Fulham Union, and is now by virtue of such birth settled in the Fulham Union.

An order was made removing the paupers to the Portsea Union. Upon appeal to the quarter sessions it was contended on behalf of the Portsea Union that the settlement of the paupers was that of the mother derived by her marriage on the 3rd of October, 1875, with John Burdett, such settlement having passed to him according to the then existing law, and before the passing of 39 & 40 Vict. c. 61. s. 35. The Fulham Union, on the other hand, contended that the paupers were legally settled in the Port-

sea Union by their birth, inasmuch as the settlement of their parent could not be shewn without enquiring into the derivative settlement of such parent as derived from her marriage with John Burdett, in a manner prohibited by 39 & 40 Vict. c. 61. s. 35.

The 39 & 40 Vict. c. 61. s. 35 is as follows:—

“No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another.

“An illegitimate child shall retain the settlement of its mother until such child acquires another settlement.

“If any child in this section mentioned shall not have acquired a settlement for itself, or, being a female, shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born.”

A. Collins (Temple Cooke with him), for the Fulham Union, cited *The Overseers of Manchester v. St. Pancras* (1). The 3rd paragraph of 39 & 40 Vict. c. 61. s. 35 prevents the paupers taking the mother's settlement which is derived from the husband, and so they have their birth settlement.

He was stopped by the Court.

A. Charles (Bullen with him), for the Portsea Union.—It may be doubted whether *The Overseers of Manchester v. St. Pancras* (1) deciding that the 3rd paragraph applies to illegitimate children, is consistent with the later case of *The Hollingbourne Union v. The West Ham Union* (2). The children were born before the Act, and under the law then in force took on the marriage of the mother

(1) Law Rep. 4 Q.B. D. 409.

(2) *Ante*, p. 74.

Guardians of Fulham Union v. Guardians of Portsea Union, Q.B.

her derivative settlement. The Act is not retrospective.

He cited *The Queen v. The Ipswich Union* (3) and *Tenterden v. St. Mary's, Islington* (4).

Temple Cooke, in reply.

POLLOCK, B.—I am of opinion that the order of sessions was right. The children were born in 1866 and 1868 respectively, and their mother married in 1875, a year before the passing of the Act. Such being the case, it was argued that to apply the Act would be to give it a retrospective effect. The word "retrospective" is capable of different meanings. In *Tenterden v. St. Mary's, Islington* (4), the pauper was above sixteen at the passing of the Act and had obtained a settlement by birth instead of her mother's settlement, and it was held that the Act did not interfere with this settlement. In this case, at the time of the passing of the Act the paupers had only the settlement of the mother until they were sixteen. I do not think that the case of *The Overseers of Manchester v. St. Pancras* (1) is affected by *The Hollingbourne Union v. The West Ham Union* (2).

MANISTY, J.—I am of the same opinion. *The Overseers of Manchester v. St. Pancras* (1) governs this case, except as to the argument that the 3rd paragraph of section 35 is not retrospective. I think that section 35 must be read with section 36, which enacts that the provisions relating to settlement shall not apply to any pauper removed under any order of removal before the passing of the Act, or in respect of whom any order of removal shall be pending at the passing of the Act. Therefore, except when the order has been made or is pending, the law is to follow section 35, and there is to be no enquiry into the derivative settlement of the mother.

Order of sessions confirmed.

Solicitors—Rexworthy, Oswald & Co., for Fulham Union; Sole, Turner & Knight, agents for Besant & Co., Portsea, for Portsea Union.

(3) 46 Law J. Rep. M.C. 207; Law Rep. 2 Q.B. D. 269.

(4) 47 Law J. Rep. M.C. 81.

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[IN THE QUEEN'S BENCH DIVISION.]

1881.

June 25. }

July 2. }

WILSON v. STRUGNELL.

Municipal Corporation—Power of Mayor to act as Justice of Peace for Borough—5 & 6 Will. 4. c. 76 (Municipal Corporation Act, 1835), s. 57—Illegal Contract—Indemnifying Bail—Recovering back Money paid as Security to Bail.

The mayor of a borough under the Municipal Corporation Act, 1835 (5 & 6 Will. 4. c. 76), which had no separate commission of the peace, acted as a Justice of the peace for the borough:—Held, that under section 57 he had power so to act.

A person becoming bail for the appearance of another, to answer a criminal charge, received money as security from the accused:—Held, that the transaction was illegal, and that the money could be recovered back at any time before the bail had applied it in reimbursing himself for loss actually sustained.

Further consideration.

The facts and arguments appear in the judgment.

Atherley-Jones, for the plaintiff.

J. A. Foote, for the defendant.

STEPHEN, J. (on July 2).—This was an action tried before me in Middlesex, on the 12th of May, 1881, and heard on further consideration on the 25th of June.

The facts were as follows:—

Manners was charged, on the 27th of September, 1879, before the mayor of Shaftesbury, with embezzlement, and was by him remanded to appear before the county magistrates sitting at Shaftesbury on the 30th. Manners was bound over to appear, and Strugnell gave bail to the extent of 100*l.* for his appearance.

Strugnell received 100*l.* from Manners as security for becoming bail. On the 30th of September Manners did not appear before the county magistrates.

Shaftesbury is one of the boroughs in schedule B of the Municipal Reform Act, and has a mayor, but no separate commission of the peace. The county

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magistrates do not recognise the right of the mayor to remand prisoners for appearance before the county bench.

There was no evidence at all as to their having taken any step in consequence of the non-appearance of Manners with reference to the recognisances; but they received an information on oath against him, and issued a warrant for his apprehension. He has not since been heard of.

On the 18th of May, 1880, Manners was adjudicated a bankrupt, and Wilson, the trustee in bankruptcy, sued Strugnell to recover from him the 100*l.* paid him by Manners.

The following were the points raised in the argument:—

It was argued for the plaintiff that the mayor of Shaftesbury had no power to take the recognisances, and that, therefore, the 100*l.* was paid without consideration, and could be recovered by Manners' trustee as money paid to his use.

This was denied on the part of the defendant.

It was also argued by the plaintiff that, even if the recognisance was valid, the consideration for the contract to indemnify had failed, as it did not appear that the recognisances had been forfeited, and as it did appear that the first prosecution had been dropped, the county magistrates having instituted on their own account an entirely new one.

To this the defendant replied that the burden of proving that the defendant was relieved from responsibility was on the plaintiff, and that he had failed to prove it.

Further, however, it was alleged by the defendant that the contract was illegal, and that, as the defendant was in possession of the money, he was entitled to retain it; and to this the plaintiff replied that, if the contract was illegal, the plaintiff was entitled to recover the money, because the illegal consideration had not been executed, and that, at all events, his trustee in bankruptcy was so entitled, whether he was or not.

I will dispose of these arguments successively.

In the first place, I hold that the mayor of Shaftesbury was entitled to hold Manners to bail to appear before

the county magistrates. By section 57 the mayor of every borough in either schedule to the Municipal Corporation Act (5 & 6 Will. 4. c. 76) is to be a Justice of the peace of and for the borough; and though no separate commission of the peace has been given to Shaftesbury under section 98, and all criminal jurisdiction vested in any corporate or chartered officer by any earlier law or charter is taken away by section 107; and though the county Justices have concurrent jurisdiction in the borough under section 111; and though there is no evidence that the mayor of Shaftesbury is in the commission of the peace for the county of Dorset, I think that the terms of sections 57 and 107 make the mayor a magistrate for the borough, and require him to act as such; nor do I understand the grounds on which it is said the county Justices refuse to recognise his jurisdiction.

I think accordingly that the recognisance was valid originally.

In the second place, it does not appear what has become of the recognisances, or whether they have or have not been indorsed under 11 & 12 Vict. c. 42. s. 21, and whether or not they have been dealt with in any, and, if so, in what way under the Summary Jurisdiction Act (42 & 43 Vict. c. 49), s. 9, does not appear. Hence there is no evidence to shew that the liability arising under the recognisance has been in any way discharged; and this being so, I must presume that it continues.

In the third place, I am of opinion that the contract to indemnify the bail against his liability was contrary to public policy, and therefore illegal and void. I should have been prepared to hold this upon the obvious principle that the effect of the contract is to deprive the public of the security of the bail; but I think that the opinion of the Court in *Jones v. Orchard* (1) is a direct authority in favour of the view which I take, though the judgment of the Court in that case proceeded on another point.

The money, therefore, must be taken to have been paid to the defendant by Manners on an illegal consideration, and the

(1) 16 Com. B. Rep. 614; 24 Law J. Rep. C.P. 229.

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[IN THE QUEEN'S BENCH DIVISION.]

1881. }
June 20. } PARKYNS (appellant) v. PREIST
July 4. } (respondent).

Locomotive—Tricycle—Highway, Locomotive on—The Locomotive Act, 1861 (24 & 25 Vict. c. 70), s. 12—The Locomotives Act, 1865 (28 & 29 Vict. c. 83), ss. 3, 4, 7—The Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), ss. 28, 29, 38.

A motor tricycle was capable of being propelled by steam alone at the rate of ten miles an hour, but when so propelled there was no noise or escape of steam, and nothing which could frighten horses or cause danger to the public using the highway beyond any ordinary tricycle. The weight was 2 cwt., and the wheels having indiarubber tires would not injure the surface of the road.

The person riding on the tricycle could work it by his feet, either independently of, or in conjunction with the application of the steam power, and by an automatic brake the machine could be stopped in a very few yards.

On a summons against the rider for non-compliance with the rules and regulations for the use of locomotives on highways prescribed by the Locomotive Acts, 1861, 1865 and 1878, the magistrate convicted the appellant.

On appeal it was,—

Held, that the conviction was right, as the tricycle was a locomotive within the definition in section 38 of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77).

This was a Case stated by a Metropolitan police magistrate on his conviction of the appellant on summonses charging him with using a certain locomotive propelled by steam, without observing the conditions prescribed by section 3 of 28 & 29 Vict. c. 83, and section 29 of 41 & 42 Vict. c. 77.

The case and facts are fully stated in the judgment.

J. W. Mellor (O'hannell with him), for the appellant.—This tricycle is not within the mischief of the statutes, and clearly was not contemplated by them.

They were directed to traction engines, heavy machines, and it will be seen that the separate provisions are wholly inapplicable to such a case as this. The decisions in Taylor v. Goodwin (1) and Williams v. Ellis (2) shew that regard will be had to the sort of vehicle contemplated by Acts of Parliament creating penalties or imposing tolls.

Leese, contra, was not called on to argue.

Our. adv. vult.

The judgment of the Court (3), written by Pollock, B., was (on July 4) read by

LORD COLERIDGE, C.J.—This is an appeal against the conviction of the appellant by a Metropolitan police magistrate under five summonses, whereby the appellant was charged with using a certain locomotive propelled by steam, being a motor tricycle, upon a public highway, without observing the conditions prescribed by section 3 of the Locomotives Act, 1865 (28 & 29 Vict. c. 83), and section 29 of the Amending Act of 1878 (41 & 42 Vict. c. 77), and by other enactments.

It was admitted before the magistrate and before us, that those conditions had not been observed; and the only question raised for our opinion is, whether the machine in question was rightly held by the magistrates to be a locomotive within the meaning of these sections. The first of these provides that "every locomotive propelled by steam or any other than animal power, on any turnpike road or public highway, shall be worked" according to certain rules and regulations thereafter contained. Section 29 of the second Act repeals a portion of section 3 of the first Act, and substitutes another regulation to be observed while the locomotive is in motion; but by section 38 the word "locomotive" is again defined as meaning "any locomotive propelled by steam or by other than animal power." The tricycle in question

(1) 48 Law J. Rep. M.C. 104; Law Rep. 4 Q.B. D. 228.

(2) 49 Law J. Rep. M.C. 47; Law Rep. 5 Q.B. D. 175.

(3) Lord Coleridge, C.J.; Pollock, B.; and Manisty, J.

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is described in paragraph 8 of the case before us, wherein the evidence of the respondent is set out. He says that he "saw propelled on the public highway, at the rate of about five miles a hour, a tricycle, on which was sitting a man working treadles with his feet, in the manner in which tricycles are usually propelled. He noticed some metal boxes under the seat of the vehicle, but when the vehicle passed him he saw no sign of steam and heard no noise. The metal cases contained a small steam-engine and boiler, and a condensing apparatus, and he saw that the steam was up for the occasion."

On the part of the appellant, Mr. Bateman, an engineer and machinist, was called as a witness. He described the machine as being like an ordinary tricycle, and capable of propulsion in the ordinary way by the feet of the rider, but with auxiliary steam power to assist the rider, which steam power was, however, sufficiently powerful to move the vehicle, if desired, without the foot motion. In a metal case (size about two feet by two feet by nine inches), placed below the level of the seat, and near the feet of the rider is a small copper tubular boiler and an engine. The fuel used is gas evolved from methylated spirit or mineral oil, in the same manner as in the contrivance known as the Whitechapel lamp. There is, therefore, no smoke, and the exhaust steam instead of being blown off into the atmosphere, producing the puffing noise common to locomotives, is discharged into a coiled pipe in another metal case behind the rider's seat, and is there condensed and returned by a small pump to the boiler as hot water, thus at once economising water and fuel, and preventing escape of steam into the atmosphere. The power of the engine was about one horse power indicated, and it was capable of driving the vehicle on a level road at a rate of nearly ten miles an hour, but not more. When the vehicle was so driven there was nothing to indicate that it was being worked by steam power, and nothing which could frighten horses or cause danger to the public using the highway beyond any ordinary tricycle. The weight of the machine was proved to be

about 2 cwt., and the tires of the wheels about 1½ inches in width, being similar to bicycle wheels, but somewhat stouter and stronger. The tires being of indiarubber, no injury could be done to the surface of the road by working the machine on it.

It was further proved that the machine was fitted with a brake, sufficiently powerful to stop the machine in a very few yards against the power of the steam even if it continued working. This was effected by the brake having a powerful leverage, so that a force far less than the force of the steam applied to the brake would nevertheless stop the machine. The brake is also fitted with an automatic action, by which when the weight of the rider is off the seat the seat rises, and thereby applies the brake, so that when there is no person sitting on the seat the brake is applied and prevents the machine moving. The machine is guided by a handle, and can be turned completely round in twice its own length. The boiler is tested to bear a pressure of 700 lbs., and it is habitually worked with a pressure of about 150 lbs. Even if the boiler did burst, being tubular and of copper, the only result would be a rent in one of the tubes, and there would be no explosion.

In answer to questions put to him on behalf of the appellant, Mr. Bateman explained that the principle of the invention was capable of extension to larger carriages, but that the use of indiarubber tires practically limited the weight to something not greatly exceeding the weight of this particular machine, and also that the fuel used could not be used economically to obtain very much greater power than was obtained.

It is scarcely necessary to do more than to read this description in order to shew that the tricycle in question comes within the words of the above statutes, as being "a locomotive propelled by steam, or any other than animal power." It cannot be less within this description because it is capable of propulsion in the ordinary way by the foot of the rider, it being expressly found in the case that the steam power was sufficiently powerful to move it, if desired, without the foot motion. It was argued, however, on behalf of the

Parkyns v. Preist, Q.B.

appellant, that such a machine could not have been within the contemplation of the framers of the statutes in question, which apparently were intended to be directed against the use of locomotives larger in size and heavier in weight, and therefore more dangerous to persons using the public highway, than the locomotive in question. It is probable that the statutes in question were not pointed against the specific form of locomotive which is described in this case. Indeed, such a locomotive was not known when they were passed, and probably not contemplated. As, however, it comes within the very words of the statute, it seems to us that we cannot, upon any true ground of construction, exclude it from their operation; and it may be observed that even if the fullest scope be given to this argument, Mr. Bateman's explanation that the principle of the invention was capable of extension to larger carriages would shew that a locomotive similar in construction and principle to that which is the subject-matter of this case might, by reason of its size and power, become much more dangerous; and if this be so, the question to be considered in each case would not be whether the locomotive in question properly came within the language of the statutes, but whether, by reason of the size or weight of the particular machine, it came within the mischief supposed to be contemplated, which shews that such an argument is vicious.

Two cases were cited by counsel for the appellant; but in truth they have no

bearing upon the present case. The first was that of *Taylor v. Goodwin* (1), in which it was held by this Court that a person riding upon a bicycle on a highway at such a pace as to endanger the life or limb of passengers may be convicted of furiously driving a carriage under the provisions of the Highway Act (5 & 6 Will. 4. c. 50), s. 78. The argument in that case turned wholly upon the meaning of the word "carriage" in that Act, and it gives us no assistance. The second case was that of *Williams v. Ellis* (2). In this case, where a local turnpike Act imposed a toll upon any horse, mule or other beast drawing any coach, sociable, chariot, berlin, &c., it was held that a bicycle was not a carriage liable to toll under the Act. This case was decided upon the ground that the carriages referred to in the statute must be carriages *ejusdem generis* with the carriages previously specified. This does not appear to us to have any material bearing upon the question now before us.

We think that the decision of the magistrate was correct, and that the conviction should stand, with costs.

Conviction affirmed.

Solicitors—Milne, Riddle & Mellor, for appellant
Gregory, Rowcliffes & Co., for respondent.

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BASTARDY—*order: subsequent marriage of mother: liability of putative father: statute*—A bastardy order, obtained under 35 & 36 Vict. c. 65. s. 3, is not revoked by the subsequent marriage of the mother. Whether the Justices have a discretion of any kind as to continuing to enforce payments under such an order after the marriage of the mother, *quære*. *Southeran v. Scott*, 56

— *order: subsequent marriage of mother: ability of husband to support: 35 & 36 Vict. c. 65. s. 3*—A bastardy order obtained under 35 & 36 Vict. c. 65, is not revoked by the subsequent marriage of the mother, though the man she marries is able to maintain the child, nor is the enforcement of the order in such case a matter for the discretion of the Justices. *Stacey v. Lintell* (48 Law J. Rep. M.C. 109; Law Rep. 4 Q.B. D. 291). *Southeran v. Scott*, *Ante*, p. 56; Law Rep. 6 Q.B. D. 518. *Hardy v. Atherton*, 105

— *order: limiting duration of order: marriage of mother: 35 & 36 Vict. c. 65 (the bastardy laws amendment act, 1872), ss. 4 and 5*—An affiliation order, in respect of a bastard

child born after the passing of 35 & 36 Vict. c. 65 (the Bastardy Laws Amendment Act, 1872), contained, as drawn up, words whereby the weekly payment thereby ordered to be made by the putative father to the mother was to cease on marriage of the mother. The mother afterwards married, and the putative father thereupon discontinued the payment. Justices, upon complaint by the mother, under 35 & 36 Vict. c. 65. s. 4, made an order for recovery of the payment:—*Held*, that such order was wrong, on the ground that the affiliation order as drawn up was alone to be looked to, and that the Justices who made the affiliation order had discretionary power to limit the payment to the period to which the order, as drawn up, limited it. *Pearson v. Heys*, 124

BENEFICIAL OCCUPATION. See Rating.

BIGAMY—*presumption of life: onus probandi: conflicting presumptions*—In 1864 the prisoner married A. In 1868, A being alive, he married B, and was convicted of bigamy. In 1879 he married C, and in 1880, C being alive, he married D. The prisoner was convicted of bigamy on an indictment charging the marriage with D in the lifetime of C. For the defence the previous conviction was produced in order to invalidate the marriage with C, by raising the presumption that A was still alive in 1879, no evidence being given as to her death. The Judge at the trial ruled that it lay on the prisoner to prove that A was alive in 1879:—*Held*, that this ruling was wrong, and that, it having been proved that A was alive in 1868, it was for the Crown to give evidence to rebut the presumption of the continuance of A's life. *Reg. v. Willshire* (C.C.R.), 57

BILL OF EXCHANGE. See Forgery.

BRIDGE. See Rating.

BURIAL BY PARISH. See Sea.

BY-LAW. See Railway Company.

CERTIORARI—*defect in conviction by justices: conviction drawn up and filed: application for rule: return: right of justices to substitute fresh conviction*—When Justices have convicted for an offence unknown to the law, and have returned the conviction to the clerk of the peace, the Court will allow a rule for a *certiorari* to go, notwithstanding that the Justices in shewing cause against such rule return a corrected record of the conviction, shewing such conviction to have been properly made. *Ex parte Austin*, 8

— See Poor Rate.

CHAPEL. See Metropolitan Management.

CHARITY. See Poor.

CHILDREN. See Poor.

CONFESSION. See Evidence.

CONTRACT, ILLEGAL. See Municipal Corporation.

CONVICTION. See *Certiorari*.

COUNTY AND PARISH. See Sea.

CRIME, Persuasion to Commit. See Murder.

CRIMINAL CAUSE OR MATTER. See Practice.

CRUELTY—*domestic animals: young parrots: omission to supply water: jurisdiction of justices*—The appellant, a foreman to a dealer in foreign birds, sent some parrots from L. to D. by railway in a box without water. They were found at H., a station on the route, after ten hours' travelling, suffering, as the respondent alleged, from want of water, which they drank eagerly when offered to them. Upon these facts the magistrate convicted the appellant, under 12 & 13 Vict. c. 92. s. 2, of torturing or causing to be tortured "domestic animals".—*Held*, that the conviction was bad, on the grounds that there was no evidence of cruelty or that the parrots in question were "domestic animals" within the meaning of the statute. *Swan v. Sanders*, 67

Quere, whether, if an offence had been committed, such offence would have been a continuing one. *Ibid*.

DEBTORS ACT—*misdeemeanour: full and true disclosure by bankrupt of all his property: limit of time to which the disclosure relates*—By the Debtors Act, 1869, s. 11, sub-s. 1, it is enacted that a bankrupt shall be guilty of a misdemeanour

"if he does not to the best of his knowledge and belief fully and truly discover to the trustee of his estate all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, &c."—*Held*, that such disclosure was not restricted to property in possession of the bankrupt at the commencement of his bankruptcy. *Reg. v. Mitchell* (C.C.R.), 76

DEMOLITION OF HOUSES. See Riot.

EDUCATION ACTS—*elementary: compliance with attendance order: attendance without fees: liability of parent to conviction: remission of fees*—A was summoned by the local School Board of Belgrave in the county of Leicester, and an order was made on him to cause his child to attend the school and to see that that order was complied with. A sent his child but without the school fees. On an information laid before the Justices, A was convicted of not complying with the order, and adjudged to pay a fine of 5s., to be levied, if necessary, by distress, and in the event of insufficiency of distress, it was ordered that A be imprisoned for five days unless the fine and costs should be sooner paid.—*Held*, on appeal, that notwithstanding that A had not applied to the guardians, under 39 & 40 Vict. c. 79. s. 10, to pay the fees, and had refused to obtain a remission of them, under 33 & 34 Vict. c. 75. s. 17, he was not liable to conviction under 39 & 40 Vict. c. 79. s. 12, as he had in fact complied with the order to cause the child to attend the school. *Richardson v. Saunders*, 65

— 1870 and 1876: "causing children to attend school": *attending without fee: by-laws of school board*—A parent who sends his child to a board school to request admission and instruction, but without the school fees, does not "cause his child to attend school" within the meaning of a by-law of a school board requiring such attendance, or within the meaning of the Elementary Education Acts. The school board may proceed against the parent for an offence against the by-law, and are not bound to proceed for an offence against the Act. *Saunders v. Richardson*, 137
Richardson v. Saunders (*Ante*, p. 65) overruled. *Ibid*.

— *absence of child from school: residence apart from parent: liability of parent*—The respondent, a widow, was summoned for neglecting, as a parent, to comply with an order to send her child to a certified efficient school. She pleaded poverty, and that, being quite unable to maintain the child, she had sent her to an aunt at Fulham. The respon-

dent also stated that the child was sometimes sent to stay with another aunt. The magistrate dismissed the summons on the ground that it was not proved that the child was residing with and under the control of the respondent, and that 33 & 34 Vict. c. 76. s. 3, by which the term "parent" includes "every person who is liable to maintain, or has the actual custody of any child," contemplate that the liability should be with the person who had the actual custody of the child:—*Held*, that the magistrate was wrong, and that upon the above facts the respondent was liable to be convicted. *The School Board for London v. Jackson*, 134

Quere, what would be the effect, if proved, of a permanent residence of a child apart from the parent. *Ibid*.

— *school board election: corrupt practices: penalty and disqualification on conviction: summary jurisdiction of justices*—Justices sitting at petty sessions have summary powers to deal with offences under section 91 of the Elementary Education Act for corrupt practices at school-board elections, the words "upon conviction" in that section being equivalent to "upon summary conviction." *Reg. v. Gaunt*, 32

EMPLOYERS AND WORKMEN—*definition clause: sub-workmen*—The respondents were earthenware manufacturers. The appellant was in their employ as a "potters' printer," and by the custom of the trade he found his own "transferer"—that is, an assistant, without whom the potters' printer was unable to perform his work. The respondents having made a reduction in the wages of persons in their employ, the appellant consented to work at the reduced rate, and presented himself each day at the works ready to continue his employment, but he was unable to work owing to the absence of his transferer, who refused to work at the reduced wages. The appellant was thereupon summoned under the Employers and Workmen Act, 1875, for absenting himself from his employment, and, in exercise of the summary jurisdiction conferred by section 4, the magistrate ordered him to pay damages to the respondents:—*Held*, that the facts amounted to a dispute under the Act between an employer and a workman, that the appellant was a workman within the meaning of the Act, and that the summons could therefore, by section 4, be heard and determined by a Court of summary jurisdiction. *Grainger v. Ainsley. Bromley v. Tams*, 48

ESTOPPEL—*res judicata: public health: highway repairable by inhabitants at large: whether decision of justices as to character of street conclusive: public health act*—An urban authority, acting under the Public Health Act, gave notice to the defendant, as owner of premises abutting on a street, to sewer and channel part of the

street, and, on his failing to comply with the notice, they did the work themselves, and summoned the defendant before Justices to obtain payment from him of the expenses incurred thereby. At the hearing the Justices dismissed the complaint on the ground that the street was a highway repairable by the inhabitants at large. Three years afterwards the urban authority gave notice to the defendant to level and pave the same part of the street, and, on his failing to comply with that notice, did the work themselves, and again summoned the defendant before Justices to obtain payment of the expenses incurred by them:—*Held* (reversing the judgment of the Exchequer Division), that the order made by the Justices on the first summons was not conclusive between the parties (in respect to the proceedings under the second summons) as to whether the street was a highway repairable by the inhabitants at large; and therefore that the urban authority were not estopped from recovering the expenses claimed under the second summons. *Reg. v. Hutchins* (App.), 35

EVIDENCE—*confession, admissibility of: inducement or threat*—The prosecutor, who employed the prisoner, having called him into a room, in the presence of a police inspector said, "He" (meaning the police inspector) "tells me you are making housebreaking implements; if that is so, you had better tell the truth, it may be better for you." The prisoner thereupon made a confession:—*Held*, that such confession was not admissible against the prisoner. *Reg. v. Fennell* (C.C.R.), 126

— on appeal. See Poor Law.

EXCISE. See Licensing Acts.

FELONIOUS DEMOLITION. See Riot.

FEME COVERT. See Poor Law.

FORGERY—*inchoate instrument: bill of exchange*—The prisoner purchased goods upon the terms that he should give to the vendors his acceptance for the price indorsed by a solvent third party. The vendors sent to him, for such acceptance and indorsement, a document in the form of a bill of exchange, but without any drawer's name thereon. The prisoner returned this document accepted by himself, and with what purported to be an indorsement by a solvent third party. This indorsement had been forged by the prisoner. No drawer's name was ever placed upon the document:—*Held*, that the prisoner could not be convicted of feloniously forging or feloniously uttering an indorsement on a bill of exchange, because the document was not a bill of exchange, as it bore no drawer's name. (By STEPHEN, J.), that the prisoner might have been convicted of a forgery at common law. *Reg. v. Harper* (C.C.R.), 90

GASWORKS CLAUSES ACTS—*penalty for not supplying copy of accounts: time when offence complete: effect of incorporation of gasworks clauses act*—The Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), by section 35 requires the undertakers to fill up and forward to the local authority, by the 26th of March in each year, an annual statement of accounts, made up to the preceding 31st of December, in a certain form, and to keep copies of such statement, and to sell the same to any applicant. A penalty is imposed in case they make default in complying with the above provisions, and for recovery of penalties complaint is to be made before a Justice within six months after the commission of the offence. The same Act, in section 1, says that "the Gasworks Clauses Act, 1847, and this Act shall be construed together as one Act; and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act;" and in section 3 that "the provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed." The appellant gas company by its special Act, passed in 1853, incorporated the Gasworks Clauses Act, 1847, which, by section 49, provides that "nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks." On the 24th of March, 1880, the respondent made complaint before Justices that the appellants had failed on the 3rd of March, 1880, to sell to him a copy of the annual statement of accounts made up to the 31st of December, 1878. The company had in fact never made up the accounts in the manner prescribed by the Act of 1871, nor forwarded any statement to the local authority of which a copy could be made:—*Held*, on appeal (affirming the conviction by the Justices of the company), first, that the appellants were subject to the provisions of the Act of 1871, which amended not only the Act of 1847 but also every private Act with which the Act of 1847 had been incorporated; and, second, that the complaint was in time. *The Dudley Gas Co. v. Warmingtton*, 69

GRANDCHILD. See **POOR LAW.**

HIGHWAYS—*general highway act (5 & 6 Will. 4. c. 50. s. 54): "search for, dig and get in or through": "avenue to dwelling-house": licence to get materials for repair of highway*—The exception in section 54 of 5 & 6 Will. 4. c. 50 does not extend to carrying materials along an avenue, but is confined to getting materials in an avenue. *Ramsden v. Yeates*, 135

—*highways and locomotives amendment act: excessive weight and extraordinary traffic: industry of neighbourhood: stone quarries*—On complaint made by a highway authority against certain quarry owners to recover expenses alleged to have been incurred in repairing the

damage done to the roads by the excessive weight and extraordinary traffic conducted by such quarry owners, it was found by the Justices that stone quarries existed and were worked in three parishes of the district of the said authority and in other parishes in the neighbourhood, and that the stone traffic was a recognised business in such parishes; that the stone was carried by the owners in waggons from four and a-half to six tons weight, and that such are the usual weights in the stone traffic; that since 1874 the roads had been formed and maintained with reference to the stone traffic of more expensive and durable materials than the neighbouring roads subject only to agricultural traffic. On appeal against an order made by the Justices for the payment by the quarry owners of expenses as being extraordinary expenses incurred by reason of excessive weight having passed along the road,—*Held*, that there was no evidence upon which the Justices could find the weight to be excessive, and that they were right in finding that the traffic was not extraordinary within the meaning of section 23. *Wallington v. Hoskins. Stone v. same. Pictor v. same*, 19

In determining whether "excessive weight" has been carried along a road, the Justices are to consider not what is the aggregate weight, but what are the conditions under which such weight has been carried. *Ibid.*

—*liability to repair: main road: road ceasing to be a turnpike road: highways and locomotives (amendment) act, 1878 (41 & 42 Vict. c. 77), s. 13*—Under the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 13 (enacting that any road which has, since the 31st of December, 1870, ceased to be a turnpike road, shall be deemed a main road, and half of the expenses incurred after the 29th of September, 1878, by a highway authority in its maintenance shall be borne by the county authority), the corporation of a borough, as its highway authority, claimed from the county authority half of the expenses of maintaining certain portions of roads, which, being formerly parts of turnpike roads, ceased in 1872 to be such through being brought within the borough by a local Act enlarging it, and applying to it as enlarged all enactments relating to the previous area; among which, under an earlier local Act, were sections 47–50 of the Towns Improvement Clauses Act, 1847, making commissioners now represented by the corporation liable for the repair of all highways within that area, and precluding turnpike trustees from collecting tolls or spending money on any road within it:—*Held*, that the claim was not sustainable, the Act 41 & 42 Vict. c. 77. s. 13 not applying where portions of roads have only ceased to form parts of turnpike trusts incidentally by being merged in another jurisdiction with an express provision as to their repair. *The Mayor, &c., of Rochdale v. The Justices of Lancashire*, 97

— *repair of: 5 & 6 Will. 4. c. 50. ss. 51, 53, 54: gathering stones on enclosed land: licence to surveyor to "gather" stones without making satisfaction to owner*—Under the Highway Act, 1835 (5 & 6 Will. 4. c. 50), s. 51, the surveyor may obtain a licence from Justices to "gather" stones lying upon any enclosed land in the parish without making any satisfaction to the owner for the stones taken. *The Alresford Rural Sanitary Authority v. Scott*, 103

— See *Estoppel. Locomotive.*

HUSBAND AND WIFE—adultery of wife: liability of husband for maintenance: poor law amendment act, 1868 (31 & 32 Vict. c. 122), s. 33—A husband is not liable under section 33 of the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), to maintain a wife who has committed adultery and is living apart from him. *Culley v. Charman*, 111

ILLEGITIMATE CHILDREN. See *Poor.*

INDICTMENT. See *Practice.*

INDUCEMENT AND THREAT. See *Evidence.*

INTENT TO DEFRAUD. See *Railway Company.*

IRREMOVABILITY. See *Poor.*

JURISDICTION. See *Cruelty.*

LARCENY—taking: excessive payment made under fear—The prosecutrix gave the prisoner, a travelling grinder, six knives to grind. He ground them, and demanded 5s. 6d. for the work. The prosecutrix refused to pay that amount, on the ground that the charge was excessive. Being threatened by the prisoner, the prosecutrix, in fear, paid the sum demanded. Evidence was given that the trade charge for grinding the six knives was 1s. 3d.—*Held*, upon the authority of *The Queen v. Macgrath* (39 Law J. Rep. M.C. 7; Law Rep. 1 C.C.R. 206), that the above facts constituted a larceny, and that it was immaterial that some money was owing from the prosecutrix to the prisoner. *Reg. v. Lovell* (C.C.R.), 91

LICENSING ACTS—death of licensed person during continuance of licence: expiration of licence: application to special sessions: 9 Geo. 4. c. 61. ss. 4, 13, 14—A, duly licensed under 9 Geo. 4. c. 61, intended to apply for a renewal of her licence at the general annual licensing meeting to be held by adjournment on the 2nd of October. On the 26th of September she received notice that the police would object on the ground of her age; and on the 27th of September she died.

No notice was or could be given by any person of application for a licence for the premises to be heard on the 2nd of October, and no licence was granted to any person on that day. No application was made at the next special sessions on the 6th of November, but notice having been duly given at the following special sessions, on the 4th of December, W. did apply under section 14 of 9 Geo. 4. c. 61, as assignee of the heir of A, for a licence in respect of the premises. The Justices refused the application on the ground that they had no jurisdiction after the expiration of the time for which A's licence had been granted, namely, the 10th of October.—*Held*, on the authority of *Simpkin v. The Justices of Birmingham* (41 Law J. Rep. M.C. 102; Law Rep. 7 Q.B. 482) and *Ex parte Todd* (47 Law J. Rep. M.C. 89; Law Rep. 3 Q.B. D. 407), that the Justices were right. *White v. The Justices of Coquettale*, 128

— *excise licence: sale during closing hours: 37 & 38 Vict. c. 49. s. 3*—By the Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 3, "All premises in which intoxicating liquors are sold by retail" are to be closed during certain hours.—*Held*, that this enactment was not confined to premises licensed by the Justices to sell intoxicating liquors, but included premises in which intoxicating liquors were sold in pursuance of an excise licence granted under 24 & 25 Vict. c. 21. *Martin v. Barker*, 109

— 1828 (9 Geo. 4. c. 61), s. 14—1874 (37 & 38 Vict. c. 49), s. 15: *conviction of licensed person: application by owner for authority to carry on business: discretion of justices at special sessions to refuse*—Under the Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 15, application was made at special licensing sessions by the owner of a beerhouse, licensed continuously from a date anterior to 1869, the tenant of which had been convicted of felony, for the grant of a licence in respect of the same premises. The Justices refused the application on the ground that the house was of a disorderly character.—*Held*, that the Justices at special licensing sessions, as well as the Justices at the general annual licensing meeting, had discretion so to refuse the application. *The Queen v. Rowell* (41 Law J. Rep. M.C. 175) followed. *Reg. v. The Justices of Hertfordshire. In re Wroughton*, 121

LOCOMOTIVE—tricycle: highway, locomotive on: the locomotive act, 1861 (24 & 25 Vict. c. 70), s. 12: the locomotives act, 1865 (28 & 29 Vict. c. 83), ss. 3, 4, 7: the highways and locomotives (amendment) act, 1878 (41 & 42 Vict. c. 77), ss. 28, 29, 38—A motor tricycle was capable of being propelled by steam alone at the rate of ten miles an hour, but when so propelled there was no noise or escape of steam, and nothing

which could frighten horses or cause danger to the public using the highway beyond any ordinary tricycle. The weight was 2 cwt., and the wheels having indiarubber tires would not injure the surface of the road. The person riding on the tricycle could work it by his feet, either independently of, or in conjunction with the application of the steam power, and by an automatic brake the machine could be stopped in a very few yards. On a summons against the rider for noncompliance with the rules and regulations for the use of locomotives on highways prescribed by the Locomotive Acts, 1861, 1865 and 1878, the magistrate convicted the appellant. On appeal it was,—*Held*, that the conviction was right, as the tricycle was a locomotive within the definition in section 38 of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77). *Parkyn v. Priest*, 148

— See Highways.

MANSLAUGHTER—joint wrongdoers : culpable negligence—The prisoners A, B and C went into a field in proximity to highways and houses, taking with them a rifle. B placed a board, which was handed to him by A in the presence of C, in a tree in the field as a target. All three fired shots directed at such target from a distance of 100 yards. One of the shots thus fired killed a boy in a tree in a garden at a spot distant 393 yards from the firing point. No precautions were taken to prevent danger from such firing. It was proved that the rifle was sighted at 950 yards, and would probably be deadly at a mile. There was no evidence as to which of the prisoners fired the fatal shot. The prisoners were all found guilty of manslaughter:—*Held*, that all three prisoners were rightly convicted of manslaughter, because they had been guilty of a breach of duty in firing at the spot in question without taking proper precautions to prevent injury to others. *Reg. v. Salmon* (C.C.R.), 25

MAYOR OF BOROUGH. See Municipal Corporation.

MENACE. See Larceny.

METROPOLITAN BUILDING ACT—dangerous structure : party wall : expenses of securing dangerous structure, how estimated : liability of one owner of party wall—The owner of premises bounded east and west by party walls, having pulled down the interior, the Metropolitan Board of Works gave notices to him and to the joint owners of the party walls on either side, under section 72 of the Metropolitan Building Act, 1855 to take down, secure and shore up the party walls as dangerous structures. The owners did nothing, and the board did the work themselves, employing a builder at prices fixed by a running contract between themselves and him,

entered into some time previously. This contract caused the amount paid by the board to be in excess of the market price of such work at the time it was done. The board then summoned the first-mentioned owner alone in respect of the whole sum, whereupon he objected that the board could only claim the amount which the work was worth at the time it was done; and secondly, that he was only liable for his proportion, and that the other owners should have been summoned also for payment of their respective shares:—*Held*, that the magistrate was right in overruling both objections, and making the order for "all expenses incurred," leaving the appellant to get contribution from the other owners. *Debenham v. The Metropolitan Board of Works*, 29

METROPOLITAN MANAGEMENT ACTS—contribution towards new street : "house and land" : dissenting chapel—The appellants were the trustees of a chapel which abutted on and formed part of a new street within the meaning of 18 & 19 Vict. c. 120. The chapel was registered as a place of religious worship, but had not been consecrated, and there was no dedication of the land in perpetuity. Attached to the chapel was a vestry, and there were also rooms for a caretaker, besides lecture- and schoolrooms underneath the chapel:—*Held*, that the trustees were the owners of a "house" within the meaning of 18 & 19 Vict. c. 120. s. 105, or of land within 25 & 26 Vict. c. 102. s. 77, and were liable to contribute to the expense of making and paving the street. *Caiger v. The Vestry of St. Mary, Islington*, 59

MISDEMEANOUR. See Debtors Act.

MISDIRECTION ON INDICTMENT. See Practice.

MUNICIPAL CORPORATION—power of mayor to act as justice of peace for borough : 5 & 6 Will. 4. c. 76 (municipal corporation act, 1835), s. 57 : illegal contract : indemnifying bail : recovering back money paid as security to bail—The mayor of a borough under the Municipal Corporation Act, 1835 (5 & 6 Will. 4. c. 76), which had no separate commission of the peace, acted as a Justice of the peace for the borough:—*Held*, that under section 57 he had power so to act. A person becoming bail for the appearance of another, to answer a criminal charge, received money as security from the accused:—*Held*, that the transaction was illegal, and that the money could be recovered back at any time before the bail had applied it in reimbursing himself for loss actually sustained. *Wilson v. Strugnell*, 145

MURDER—endeavouring to persuade, or encouraging to commit : newspaper article : 24 & 25 Vict. c. 100. s. 4—Section 4 of 24 & 25 Vict. c. 100 enacts (*inter alia*) that "whoever shall solicit,

encourage, persuade, or endeavour to persuade, or shall propose to any person, to murder any other person, whether he be a subject of her Majesty or not, and whether he be within the Queen's dominions or not, shall be guilty of a misdemeanour." The defendant was indicted under that section, and was proved to have published an article written in German in a newspaper published in that language in London, which was sold to the public and also circulated among subscribers. The article exulted in the recent murder of the Emperor of Russia, and commended it as an example to revolutionists. The jury were directed that if they thought that by the publication of the article the defendant did intend to, and did, encourage or endeavour to persuade any person to murder any other person, whether a subject of her Majesty or not, and whether within the Queen's dominions or not, and that such encouragement and endeavouring to persuade was the natural and reasonable effect of the article, they should find him guilty:—*Held*, that such direction was correct. The offence of encouraging or endeavouring to persuade any person to murder any other person within the meaning of 24 & 25 Vict. c. 100. s. 4, may be completed by the publication of an article in a newspaper, although not specifically addressed to any one person. *Reg. v. Most* (C.C.R.), 113

NEW TRIAL on Indictment. See Practice.

NUISANCE. See Practice.

PARISH. See Poor. See.

POOR LAW—*divided parishes, &c., act: residence: order of removal made without corroborative evidence: appeal to sessions: fresh evidence on appeal: jurisdiction of sessions*—By the Divided Parishes, &c., Act (39 & 40 Vict. c. 61), s. 34, a settlement is acquired by three years' residence in a parish, but no order of removal in respect of a settlement so acquired is to be made upon the evidence of the person to be removed, without such corroboration as the Justices or Court think sufficient. An order was made by Justices for the removal of a pauper to M. by reason of a settlement acquired under the 34th section without any corroboration. There was an appeal to the sessions on several grounds, one of which was that no settlement had been acquired by residence; and another, that no corroboration of the pauper's evidence was given before the Justices who made the order of removal:—*Held*, that it was competent for the sessions to receive such corroborative evidence, though not tendered before the Justices making the order, there being other grounds of appeal which could not be decided without hearing such evidence. *Reg. v. The Guardians of the Abergavenny Union*, 1

Quære, whether such corroborative evidence could

have been received if the only ground of appeal had been that the order of removal was a nullity, owing to its having been made upon the evidence of the pauper without any corroboration. *Ibid*.

— *maintenance of grandchild: coverture: married woman having separate property: statutes*—A married woman is not liable during coverture to contribute towards the maintenance of her grandchildren, notwithstanding that she has separate estate, and is of sufficient ability at her own charges and independently of her husband to support them. *Coleman v. The Churchwardens and Overseers of Birmingham*, 92

— *rate: appeal to quarter sessions: notice of appeal: reasonable time*—By 17 Geo. 2. c. 38. s. 4, an appeal from a poor rate is given to the "next quarter sessions," and by 12 & 13 Vict. c. 45. s. 1, "fourteen clear days' notice of appeal must be given." An appellant under these provisions is, however, entitled to a further reasonable time in which to make up his mind whether to appeal or not. Where, therefore, a rate was published on the 21st of March, and the next actual quarter sessions were held on the 5th of April,—*Held*, that the appellant was not bound to appeal to these sessions, but was entitled to appeal to the next following sessions. *Reg. v. The Justices of Surrey*, 10

— *rateable occupation: sale of grass: licence of exclusive pasturage for ten months*—Where an owner of grass land upon the determination of a previous tenancy advertised for sale by auction and sold the grass thereupon for ten months to purchasers, on the condition of their feeding it with certain stock, dressing the dung, cutting the thistles and leaving the fences in good repair, and announced at the time of the sale that it was made free from all rates, tithes and taxes,—*Held*, that he was rightly inserted in the rate book as occupier, the transaction with the purchasers of the grass only amounting to a licence by him to them to turn in their cattle, and not constituting them tenant occupiers. *Mogg v. The Overseers of Yatton*, 17

— *rating act: valuation of land used as a plantation: assessment of sporting rights*—By the Rating Act, 1874 (37 & 38 Vict. c. 54), s. 4. sub-s. (a), the rateable value of any land used only for a plantation or wood is to be estimated "as if the land, instead of being a plantation or a wood, were let and occupied in its natural and unimproved state":—*Held*, that the enhanced value of such land, owing to the presence of game upon it, was properly taken into account in assessing its rateable value. *Eyton v. The Overseers, &c., of Mold*, 39

— *rating: statute 6 & 7 Will. 4. c. 96. s. 6: special sessions: right of appeal by assessment committee against order of special sessions: union*

assessment committee act—By 27 & 28 Vict. c. 39. s. 2, an assessment committee may, with the consent of the guardians, appear as respondents to an appeal against a poor-rate made for a parish contained in a union to which the Union Assessment Committee Act, 1862, applies, "but in the name of the guardians, in like manner and with the same incidents and subject to the same liabilities and entitled to the same remedies and rights as in the case of persons other than the overseers to whom notice of appeal may be given":—*Held*, that an assessment committee who had appeared as respondents at special sessions, under the provisions of 27 & 28 Vict. c. 39. s. 2, were entitled to appeal to quarter sessions in the name of the guardians against the decision of Justices at such special sessions. *Reg. v. The Justices of Montgomeryshire*, 52

POOR LAW (continued)—*refreshment contractor: quarter sessions: appeal against assessment: admissibility of evidence: annual value less than rent: case stated by sessions: costs: removal of order without certiorari: summary jurisdiction act: rules of court*—The appellant was the occupier of certain refreshment-rooms at the S. station at a fixed annual rent, and was rated as such occupier by the respondents. Upon appeal to the sessions against a poor-rate the appellant tendered evidence as to sums received and paid for provisions, salaries, &c., in connection with the premises so rated, with a view of shewing that the business was carried on at a loss, and that the rent agreed upon exceeded the annual value of the premises:—*Held*, that such evidence was admissible. *Clark v. The Assessment Committee of the Alderbury Union*, 33
The Court has power to grant costs to a successful party in a case stated by sessions upon appeal against a poor-rate, the proceedings being civil proceedings within Order LXII. of the Rules of Court, 1880. *Ibid*.

—*settlement: residence for three years: "parish"*—Residence for three years partly in one parish and partly in another within the same union does not confer a settlement on a pauper under section 34 of 39 & 40 Vict. c. 61, which applies to persons residing for three years in any "parish." *Plomegate Union v. West Ham Union*, 51

—*settlement: children under sixteen*—Under 39 & 40 Vict. c. 61. s. 35, legitimate children under the age of sixteen follow their widowed mother's settlement derived from her husband. *Hollingbourne Union v. West Ham Union*, 74

—*settlement: irremovability: penitentiary supported by subscriptions: bona fide charitable gift*: 54 Geo. 3. c. 170. s. 6; 9 & 10 Vict. c. 66. s. 1; 39 & 40 Vict. c. 61. s. 34—Section 6 of 54 Geo. 3. c. 170 enacts that no person shall gain a settlement by residence in a charitable institution. Section 1 of 9 & 10 Vict. c. 66 enacts

that no person shall be removed from any parish in which such person shall have resided for five years (by subsequent statutes reduced to one year), "provided always that the time during which such person . . . shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a bona fide charitable gift, shall be excluded from the computation of time hereinbefore mentioned." Section 34 of 39 & 40 Vict. c. 61 enacts that where any person shall have resided for three years in any parish, under such circumstances in each of such years as would in accordance with the several statutes in that behalf render him irremovable, he shall be deemed to be settled therein until he shall acquire a settlement elsewhere. A pauper had for upwards of three years been maintained in a penitentiary or home, which was supported by offertories collected in various churches, and by charitable subscriptions from all parts of England:—*Held*, that the circumstances of the pauper's residence were not such as to bring her within the proviso to section 1 of the 9 & 10 Vict. c. 66, and that, having become irremovable under that Act, the Act of Geo. 3 did not apply so as to prevent her gaining a settlement under the 39 & 40 Vict. c. 61. s. 34. Judgment of the Queen's Bench Division (reported *Ante*, p. 42) affirmed. *The Guardians of the Fulham Union v. The Guardians of the Isle of Thame Union* (App.), 101

—*settlement: illegitimate children: subsequent marriage of mother: derivative settlement: 39 & 40 Vict. c. 61. s. 35: retrospective effect*—The statute 39 & 40 Vict. c. 61. s. 35, forbidding the derivation of settlements, applies to illegitimate children who were born before the passing of the Act, and whose mother married before its passing, so that they have the settlement of their place of birth not of their mother's husband. *The Guardians of the Fulham Union v. The Guardians of the Portsea Union*, 144

— See Husband and Wife.

PRACTICE—*appeal: public health act, 1875 (38 & 39 Vict. c. 55), ss. 91, 94, 95, 96, 251: appeal from order of justices to abate nuisance: "criminal cause or matter": the judicature act, 1873, s. 47*—Justices having made an order under section 96 of the Public Health Act, 1875, requiring an owner of property to abate a nuisance, and for that purpose to do certain works, the Queen's Bench Division granted a *certiorari* to bring up the order for the purpose of quashing it:—*Held*, that an appeal would not lie from the order of the Queen's Bench Division (reported *Ante*, p. 41), because made in a "criminal cause or matter" within section 47 of the Judicature Act, 1875. *Ex parte Whitchurch; in re An Order made by Justices of Nottingham* (App.), 99

— *county courts act: general request to county court judge to take notes: signature of judge*—In order to entitle a party to obtain signature of a County Court Judge's notes under section 6 of the County Courts Act, 1875, there should be a request to make a note of the questions of law intended to be raised. A mere general request to such Judge upon a case coming on for hearing to take notes of the evidence is not sufficient. *In the matter of an action between Morgan & Reiss, 27*

— *indictment for obstruction of highway: new trial: acquittal of defendant: misdirection on criminal trial*—Where a defendant has been tried upon an indictment involving the danger to him of imprisonment if found guilty, and has been acquitted, no new trial can be had. *Reg. v. Duncan, 95*

Where a man had been acquitted upon an indictment charging him with having obstructed a public highway, the Court refused to make absolute a rule for a new trial on the ground of misdirection of the Judge, and that the verdict was against the weight of the evidence, holding that he could not be put in peril a second time upon the criminal charge of which the jury had acquitted him. *Reg. v. Scatfe* (17 Q.B. Rep. 238; 20 Law J. Rep. M.C. 229) not followed. *Ibid.*

PRESUMPTION OF LIFE. See Bigamy.

PRISONERS—insane: maintenance of: by whom expenses to be paid—The liability for the maintenance of insane prisoners who have no settlement, which is thrown by 3 & 4 Vict. c. 54, and 27 & 28 Vict. c. 29, on the county in which they are confined, is not transferred to the consolidated fund by the Prisons Act, 1877 (40 & 41 Vict. c. 21), s. 4, which enacts that "all expenses incurred in respect of the maintenance of the prisons to which the Act applies, and of the prisoners therein, shall be defrayed out of moneys provided by Parliament":—*So held* by the Court of Appeal (affirming the decision of the Divisional Court). *Reg. v. Oastler and Mews, Justices of Surrey* (App.) 4

PRIVATE IMPROVEMENT. See Public Health.

PROOF, BURTHEN OF. See Bigamy.

PUBLIC HEALTH—sewerage of street: recovery of expenses incurred by local board: notice not in accordance with statute: private improvement expenses: summary procedure before justices—The 150th section of the Public Health Act, 1875, permits an urban authority in certain cases to give notice to the owners of premises fronting, adjoining or abutting on such parts of a street as in the judgment of such urban authority required to be sewered, requiring them to do what is necessary within a time to be specified in the notice, and, in the event of non-compliance with the notice, to execute the works

themselves; and the same section also provides that such urban authority "may recover in a summary manner the expenses incurred by them in so doing from the owners in default, . . . or may by order declare the expenses so incurred to be private improvement expenses." By section 213 *et seq.*, a private improvement rate may be levied for expenses declared to be private improvement expenses, and certain advantages are given to owners. A notice given to the appellants, who were owners of premises fronting a street within the meaning of the 150th section, requiring them to do certain sewerage works within a prescribed period, and stating that if such works were not executed the urban authority would execute the same themselves at the appellants' expense, thus concluded: "And the said urban authority will thereupon also proceed to declare all costs, charges and expenses paid, expended or incurred by them in consequence of such neglect or default, to be private improvement expenses, and to enforce payment according to law":—*Held*, that even assuming the notice to have been good, the concluding portion could not be treated as surplusage, and that it was not, therefore, competent for the urban authority, after their declared intention to treat the expenses incurred as private improvement expenses; to proceed against the appellants summarily for the recovery of such expenses. *Gould v. The Bacon Local Board, 44*

— See Estoppel. Practice.

QUARTER SESSIONS. See Poor Law.

RAILWAY COMPANY—by-law, divisibility of: passenger travelling in a first-class carriage with second-class ticket: intention to defraud—The 8 Vict. c. 20. s. 103 enacts that if any person travel in any carriage of the company without having previously paid his fare and with intent to avoid payment thereof, . . . he shall for such offence forfeit 40s. By sections 108 and 109 power is given to a company to make by-laws for regulating, *inter alia*, "the travelling upon or using and working of the railway," provided such by-laws be not repugnant to the provisions of the Act. By a by-law under the above Act, "Any person travelling, without the special permission of some duly authorised servant of the company, in a carriage or by a train of a superior class to that for which his ticket was issued is hereby subject to a penalty not exceeding 40s., and shall in addition be liable to pay his fare, according to the class of carriage in which he is travelling, from the station where the train originally started, unless he shews that he had no intention to defraud." The appellant was convicted in a penalty of 10s. under this by-law for travelling in a first-class carriage with a second-class ticket, and it was found as a fact that he did so with the intention of defrauding the company:—*Held*, first, that

the by-law taken as a whole was void, on the ground that the penalty imposed by the latter part was unreasonable—*Saunders v. The South Eastern Railway Company* (49 Law J. Rep. Q.B. 61). Secondly, that the by-law was divisible, but that the conviction could not be upheld, for that the first part of the by-law, which alone was applicable to the case, omitted the intention to defraud required by 8 Vict. c. 20. s. 103 to constitute the offence. It was therefore repugnant to the statute and invalid. *Dyson v. The London and North Western Rail. Co.*, 78

RATE. See Poor Law.

RATING—successive occupation: liability of outgoing occupier: bridge acquired by board of works: liability to rate: beneficial occupation—A bridge company which was assessed to the rates in Putney transferred its property to the Metropolitan Board of Works under the provisions of an Act which required the board to keep the bridge open for public use free of toll, and which provided that the board should receive an annual contribution from the county of Surrey. At the time when the bridge was thus transferred, a rate to which the company were rated, and in respect of which their names were in the rate book, was not wholly discharged, so that it extended over a period after the occupation of the bridge by the company had ceased:—*Held* (affirming the judgment of the Queen's Bench Division), that the liability of the bridge company to be assessed to the rate did not cease until there was a succeeding occupier who was liable to be assessed to the rate; that the Metropolitan Board of Works were not so liable, and that the board could not be assessed in respect of their property in the bridge, inasmuch as there was no beneficial occupation of the bridge by them. *Hare v. The Churchwardens and Overseers of Putney* (App.), 81

RATING ACT. See Poor-Rate.

RESIDENCE. See Poor Law.

RETROSPECTIVE EFFECT. See Poor.

RIOT—felonious demolition of houses: liability of hundred: 7 & 8 Geo. 4. c. 31. s. 2—Where rioters injure a house by breaking windows and shutters, without an intention to demolish it, the house is not "feloniously pulled down, demolished or destroyed, wholly or in part," so as to make the hundred liable for compensation under 7 & 8 Geo. 4. c. 31. s. 2. The fact that goods were stolen does not affect the question; but there must be either demolition or injury, with an intention to demolish, as distinguished from malicious injury. *Drake v. Footitt. Drake v. Hankin*, 141

SALE OF FOOD AND DRUGS ACT—consignor and consignee: adulterated milk in course of transit: no delivery of sample to agent of seller—By the Sale of Food and Drugs Act, 1875, s. 14, a person purchasing an article of food with the intention of submitting the same to analysis is required forthwith to notify to the seller or his agent selling the article his intention to have the same analysed, and to deliver a sample to the seller or his agent. By the Amendment Act, 1879, s. 3, an inspector may procure at the place of delivery any sample of milk in course of delivery to the purchaser or consignee, in pursuance of any contract for the sale to such purchaser or consignee of such milk, and shall submit the same to be analysed, and the same shall be analysed and proceedings shall be taken and penalties on conviction shall be enforced in like manner in all respects as if such inspector had purchased from the seller or consignee under the principal Act. The respondent, who resided at Coventry, was charged with having sold, to the prejudice of the purchaser, a pint of adulterated milk. It appeared that he had contracted to supply milk to a London dealer, and that the appellant seized one of the milk cans at the Easton Station, while in course of delivery, and required the railway porter to give him a sample for the purpose of having it analysed. The appellant then gave notice to the porter of his intention to have the analysis made, and gave him the required sample and treated him as the agent of the seller under section 14 of the Food and Drugs Act, 1875:—*Held*, that the porter was not an agent of the seller; but *Held* also, that section 14 of the principal Act was not incorporated into 42 & 43 Vict. c. 31, s. 3, and that accordingly the due performance of the condition contained in the former section was not necessary to ensure a conviction. *Rouch v. Hall*, 6

SEA—bodies cast on shore: buried by parish: expenses from county—By 48 Geo. 3. c. 75. s. 1 the churchwardens and overseers of the parish in which any dead body "shall be found thrown in or cast on shore from the sea by wreck or otherwise," shall cause the same to be decently interred; and by section 6 a Justice of the peace for the county may order the treasurer for the county to pay such churchwardens and overseers the costs and expenses thereby incurred. A collision occurred in the river Thames near Woolwich, between the steamships *Princess Alice* and *Bywell Castle*, whereby the former ship was sunk and more than 600 people who were on board her were drowned. Many of the bodies were found floating on the water or sunk in the wreck; they were collected in boats, and landed in the parish of Woolwich, and eventually buried by the churchwardens and overseers of the parish. The river Thames at Woolwich where the bodies were found is a tidal navigable river where great ships go, but its mouth, where it joins the sea, is more than thirty miles distant. A magistrate for the county having re-

fused to order the county treasurer to reimburse the churchwardens and overseers the expenses attending the burial.—*Held*, that the magistrate was justified in refusing, for that the Thames at Woolwich was not the "sea" within the meaning of the Act. *The Churchwardens of Woolwich v. Robertson* (App.), 87

SCHOOL BOARD. See Elementary Education.

SEPARATE ESTATE. See Poor Law.

SETTLEMENT. See Poor Law.

SESSIONS—*right of appeal: notice of appeal: time: statutes: summary jurisdiction act: practice: regulations and conditions of appeal*—By 11 Geo. 2. c. 19. s. 5 an appeal is given in general terms against a Justices' order made under that Act to the next general or quarter sessions. By 12 & 13 Vict. c. 45. s. 1, in all appeals to the sessions fourteen clear days' notice of appeal must be given. The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), by section 32 enacts that a person authorised by any past Act to appeal, may appeal subject to the conditions and regulations contained in the former Act, one of which is that notice and grounds of appeal must be given within seven days after the Justices' decision where no time is prescribed; "provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorising the appeal, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act." W. appealed from an order made under 11 Geo. 2. c. 19, and complied with the requirements of 12 & 13 Vict. c. 45. s. 1, but did not give notice of his intention to appeal within seven days of the Justices' decision, or otherwise observe the procedure contained in the Summary Jurisdiction Act, 1879:—*Held*, that the provisions contained in the last-mentioned statute applied, and that inasmuch as notice of appeal had not been given in proper time the sessions had no jurisdiction to hear such appeal. *Reg. v. The Justices of Salop*, 72

Per LINDLEY, J.—The requirements of 12 & 13 Vict. c. 45. s. 1 as to notice of appeal are consistent with the provisions contained in the Summary Jurisdiction Act, 1879. *Ibid*.

SEWERING OF STREET. See Public Health.

SHIPPING—supply of apprentice by unlicensed person: "crimping": merchant shipping act, 1854 (17 & 18 Vict. c. 104), s. 147: owner of ship: contract for purchase of share in ship:

equitable part owner of ship: merchant shipping amendment act, 1862 (25 & 26 Vict. c. 63), s. 3. *Hughes v. Sutherland* (Q.B. 567), 147

SPECIAL SESSIONS. See Licensing Act.

SPORTING. See Poor-Rate.

STREET. See Metropolitan Management.

WILD BIRDS PROTECTION ACT, 1880 (43 & 44 Vict. c. 35), s. 3: *foreign bird: exemption from penalties*—The Wild Birds Protection Act, 1880, s. 3, imposes a penalty on any person who shall shoot or take wild birds between the 1st of March and the 1st of August, or who "shall expose or offer for sale, or shall have in his control or possession after the 15th day of March, any wild bird recently killed or taken, . . . unless such person shall prove that the said wild bird was either killed or taken, or bought or received during the period in which such wild bird could be legally killed or taken, or from some person residing out of the United Kingdom." The appellant, a poulterer, was summoned, under section 3, for having in his possession and exposing for sale some wild birds on the 18th of March, 1881. He proved that he had bought them from S., a salesman in Leadenhall Market, who had bought and received them from a person residing out of the United Kingdom:—*Held*, that the appellant had not brought himself within the exemption clause, which contemplated a direct purchase or receipt from a person residing out of the United Kingdom. *Taylor v. Rogers*, 132

TIME. See Sessions.

TRICYCLE. See Locomotive.

TURNPIKE ROAD. See Highway.

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THE
LAW JOURNAL REPORTS

FOR
THE YEAR 1881:

CASES

IN THE

Probate, Divorce and Admiralty Division

OF

THE HIGH COURT OF JUSTICE,

REPORTED BY

GEORGE CALLAGHAN, Esq., AND EDWARD STANLEY ROSCOE, Esq.,
BARRISTERS-AT-LAW;

AND ON APPEAL THEREFROM

TO

The Court of Appeal and House of Lords,

REPORTED BY

ARTHUR CLEMENT EDDIS, Esq., H. LACY FRASER, Esq.,
WILLIAM ROBERT COLLYER, Esq., ROBERT BRUCE RUSSELL, Esq.,
AND
(in the House of Lords) LIONEL LANCELOT SHADWELL, Esq.,
BARRISTERS-AT-LAW.

MICHAELMAS, 1880, TO MICHAELMAS, 1881.



PROBATE, DIVORCE AND ADMIRALTY.
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MDCCLXXXI.

CASES ARGUED AND DETERMINED

IN THE

Probate, Divorce and Admiralty Division

OF

THE HIGH COURT OF JUSTICE,

AND ON APPEAL THEREFROM TO THE

COURT OF APPEAL AND HOUSE OF LORDS.

MICHAELMAS 1880 TO MICHAELMAS 1881.

44 Victoria.

PROBATE. }
1880. }
Dec. 7, 14. } In the goods of GEORGE
HARTLEY (deceased).

Two Wills—By first the whole of Testator's Real and Personal Estate given to Wife, the sole Executrix, and all former Wills revoked—By second Will the Household Furniture and Effects, and all Moneys whatsoever deposited or invested to Wife for life, and after her decease to Testator's Sister-in-law, joint Executrix with Widow—No disposition of Real Estate or residue of the Personal Estate, and no Revocatory Clause—Probate of both Papers.

G. H. made two wills. By the first of such wills he gave the whole of his real and personal estate and effects to his wife E. H. absolutely, and appointed her sole executrix thereof, and revoked all former wills. By the second will he gave his household furniture and effects and all moneys whatsoever deposited or invested to his wife for life, and after her decease to his wife's sister, M. B., absolutely, whom he also appointed joint executrix with his wife. The said will contained no disposition of the real estate or the residue of the personal estate, and no clause revocatory of previous wills. The Court granted probate of both papers

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as together constituting the will of the testator, but before doing so required that notice of the application for such probate should be served on the heir-at-law.

George Hartley, late of Arthur Street, Becket Street, Leeds, in the county of York, a retired grocer, died on the 22nd day of September, 1880, leaving surviving him his widow, Elizabeth Hartley, and James Hartley, blacksmith, his natural and lawful brother and heir-at-law and only next-of-kin.

He executed on a form on the 15th of January, 1868, the following will:—

“This is the last will and testament of me, George Hartley, of, &c. Firstly, I desire that all my just debts, funeral and testamentary expenses be paid and satisfied by my executors hereinafter named as soon as conveniently may be after my decease. And, secondly, I give, devise and bequeath all and every my household furniture, linen, wearing apparel, books, plates, pictures, china, horses, carriages, carts, and also all and every sum and sums of money which may be in my house, about my person, or which may be due to me at the time of my decease, and also

B

In the goods of George Hartley, Prob.

all other my moneys invested in stocks, funds and securities for money, book debts, money on bonds, bills, notes or other securities, and all and every other my estate and effects whatsoever and wheresoever, both real and personal, whether in possession, reversion, remainder or expectancy, unto my dear wife to and for her own use and benefit absolutely. And I nominate, constitute and appoint my said wife sole executrix of this my will; and hereby revoking all former or other wills at any time heretofore made by me, I declare this to be my last will and testament. In witness whereof," &c.

On the 24th of August, 1879, he made and duly executed the following paper:—

"Be it known to all men. By the grace of God I, George Hartley, now residing at No. 11 Arthur Street, Becket Street, in the borough of Leeds, in the county of York, late grocer but now out of business, do hereby declare this deed to be my last will and testament, and do hereby authorise and appoint my wife, Elizabeth Hartley, and Martha Britton (sister of the said Elizabeth Hartley), spinster, to act conjointly as sole executrices to this my last will and testament. And at my demise I hereby give and bequeath all my household furniture and effects, and all moneys whatsoever deposited or invested, to my wife Elizabeth Hartley for her own personal use and sole benefit as long as she may live; and at the death of the said Elizabeth Hartley, the said household furniture and effects, and all moneys whatsoever invested and deposited shall become the *bona fide* property of Martha Britton, now residing with me at No. 11 Arthur Street, Becket Street, aforesaid, sister of the said Elizabeth Hartley. And I hereby further give and bequeath all moneys that may come due in any manner whatsoever to the said Elizabeth Hartley. Dated this the twenty-fourth day of August, 1879.

"George Hartley.

"Witness to the above,

"Thomas Henry Hawkins,

"George Robinson."

It appeared from the affidavit of Mrs. Elizabeth Hartley that about the com-

mencement of the year 1868 her husband spoke to her about making a will, saying that he intended to leave her all his property, as no one had a better right to it, and that he accordingly made the will dated the 15th of January, 1868. Her sister, Martha Britton, had assisted him in his business since 1850, receiving nothing as remuneration for her services except board, lodging and clothing, and in August, 1879, the deponent spoke to her husband about making some provision for her. He consented, and in these circumstances the will of the 24th of August, 1879, was made and duly executed by him. An affidavit to a like effect was made by Miss Britton.

Bayford moved the Court, on the 7th of December, to decree probate of both papers as together constituting the will of the deceased. The widow of the deceased was willing that such probate should be granted.

The President required that notice of the application should be given to James Hartley as heir-at-law. Such notice was accordingly served on James Hartley, but he did not appear to it.

Bayford (on December 14) renewed the application.

THE PRESIDENT (SIR JAMES HANNEN) said that the second will was in the nature of a codicil, and decreed probate of both papers as together constituting the will of the deceased.

Solicitors—Bell, Brodrick & Gray, agents for W. B. Cross, Bradford, for the applicants.

ADMIRALTY. }
1880.
July 29. }

THE ROSALIE.

Collision—Regulations for preventing Collisions, arts. 12 and 18—Sailing Vessel hove-to on Port Tack.

A vessel hove-to on the port tack is within the provisions of article 12, and is therefore bound to keep out of the way of a vessel close-hauled on the starboard tack.

This was an action of collision brought by the owners of the fishing dandy *Young Alonzo* against the schooner *Rosalie*. The wind at the time of the collision was east, and blowing freshly, but clear weather. The *Young Alonzo* was lying hove-to on the port tack, with her foresail sheet to windward, and her tiller three parts down, heading about south-east. She was so heading at the time of collision, and hailed the *Rosalie* to keep out of the way. The latter was coming up Channel close-hauled on the starboard tack, heading nearly N.N.E. She sighted the *Young Alonzo* about a mile off, bearing about three points on the port bow. The *Rosalie* kept her course till there was immediate risk of collision, when her helm was put down, and she collided with the *Young Alonzo* on the starboard side of the latter.

Aspinall and Raikes, for the plaintiffs.

Clarkson and Myburgh, for the defendants.

The Lake St. Clair (1), *The James* (2) and *The London* (3) were referred to.

SIR R. J. PHILLIMORE.—The 12th article of the Regulations applies to this case. It is in terms as follows: "When two sailing ships are crossing so as to involve risk of collision, then if they have the wind on different sides the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side, except when the ship with the wind on the port side is close-hauled, and the other ship free, when the latter shall keep out of the way; but if

they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward." The *Young Alonzo* had the wind on her port side, and the *Rosalie* on her starboard side; the former should therefore have released her tiller, and is to blame for not doing so. The *Rosalie* might have seen the *Young Alonzo* sooner, and she ought to have starboarded and passed astern of the *Young Alonzo*, whereas she ran on her starboard side. Therefore both vessels must be pronounced to blame.

Solicitors—H. C. Coote, agent for Chas. Diver, Great Yarmouth, for plaintiffs; Ingledew & Ince, for defendants.

ADMIRALTY. }
1880.
June 19. }

THE MARGARET.

Collision—Thames By-laws.

When a collision is caused by the improper navigation of a vessel in the Thames, the fact that the other vessel has infringed a by-law, the breach of which is punishable by payment of a penalty, will not take away the liability of the first-named vessel if her careless navigation is the primary cause of the collision.

This was an action of collision brought by the owners of the barge *E Wo* against the schooner *Margaret*.

Butt and Bucknill appeared for the plaintiffs.

Clarkson, for the defendant.

The cases of *Sills v. Brown* (1) and *The Gipsy King* (2) were referred to in the argument.

The point of law decided appears from the following judgment:—

SIR ROBERT PHILLIMORE.—In this case the collision took place between twelve and one o'clock in the morning of the

(1) *Sub nom. Wilson v. The Canada Shipping Company*, 2 App. Cas. 289.

(2) *Swabey*, 60.

(3) 6 Notes of Cases, 29.

(1) 9 Car. & P. 601.

(2) 2 W. Rob. 538; 5 Notes of Cases, 284.

The Margaret, Adm.

16th of October in the Thames. The vessels which came into collision were a dumb barge rowed by two men going from Victoria Docks to Hay's Wharf with a cargo of tea, and the *Margaret*, a schooner of 216 tons, on a voyage from Neath to London. The *Margaret* was moored by a chain cable to one of the Thames conservancy buoys, and there can be no dispute that she was run into by the barge. But it has been contended that, having regard to the rules and by-laws for the regulation of the navigation of the river Thames, the damage (and no doubt the barge was injured by the *Margaret's* anchor) was caused by the improper position of the *Margaret's* anchor.

Now it appears to the elder brethren and myself that the *Margaret* was lying at anchor in a proper place, that she was properly moored, that she carried a proper light which was visible at a considerable distance, that the night was clear and starlight, and that the careless navigation of the barge brought the two vessels into contact.

The 20th by-law is as follows: "No vessel shall be navigated or lie in the river with its anchor or anchors hanging by the cable perpendicularly from the hawse, unless the stock shall be awash, except during such time as shall be absolutely necessary for catting or fishing the said anchor or anchors, or during such time as may be absolutely necessary for getting such vessel under way." It is established in this case that the stock of the anchor was not awash, but about three feet above the water's edge. This by-law, therefore, appears to have been infringed, but the penalty for such infringement is stated in by-law 72, namely, forfeiture of a sum not exceeding 5*l*. The real question before the Court is, Who was guilty of the collision?—because, without the collision, whatever the condition of the anchor might have been, no damage could have been done; and it appears to us that the collision was caused by the careless navigation of the barge. In this view I am fortified by the cases referred to in the argument, but I think it right that I should state my own opinion of the present case, which, as I have said, is that the collision was

caused by the barge, and that the infringement of the by-law by the *Margaret* cannot get rid of the barge's liability. I therefore pronounce the barge *E Wo* to be alone to blame for the collision, and dismiss the action with costs.

Solicitors—Cattarns, Jehu and Hughes, for plaintiffs; J. T. Davies, for defendant.

ADMIRALTY. }
1880.
April 21. }

THE FANCHON.

Mortgage—Charter-party.

A mortgagee cannot object to a charter-party being carried out upon the ground that the effect of so doing will be to remove the ship from the jurisdiction of the Court, and thus make it difficult for him to enforce his security.

This was a motion by the charterer of the British Colonial ship *Fanchon*, who had chartered this vessel from the mortgagee in possession to carry a cargo of stone from Hull to Philadelphia, intervening in an action of mortgage against the *Fanchon* brought by the transferee of a mortgage on twenty sixty-fourths of this ship. The object of the motion was to obtain the release of the *Fanchon*, and to condemn the plaintiffs in costs.

Clarkson and Aspinall, for the intervenor, argued that the affidavits before the Court shewed that the charter-party was a beneficial one. They relied on *Collins v. Lamport* (1), and referred to *Johnson v. The Royal Mail Steamship Company* (2) and *The Innisfallen* (3).

Butt and Phillimore, *contra*, argued that the plaintiff was in possession when the proceedings were commenced; that the loading of the cargo began whilst she was under arrest; and that by allowing the vessel to leave this country the mort-

(1) 34 Law J. Rep. Chanc. 196.

(2) 37 Law J. Rep. O.P. 33; Law Rep. 3 C.P. 38.

(3) 35 Law J. Rep. Adm. 110; Law Rep. 1 A. & E. 72.

The Fanchon, Adm.

gages would have much greater difficulty in realising his security.

Clarkson, in reply.

SIR ROBERT PHILLIMORE.—This case is not without difficulty, and after some consideration I have arrived at the following conclusion. The case relied upon as containing the law upon the subject is that of *Collins v. Lamport* (1), in which judgment was delivered by Lord Chancellor Westbury in 1865; and the passage which has been referred to more than once in the argument, and which I must mention again, is this:—

“As long, therefore, as the dealings of the mortgagor with the ship are consistent with the sufficiency of the mortgagee's security, so long as those dealings do not materially prejudice and detract from or impair the sufficiency of the security comprised in the mortgage, so long is there parliamentary authority given to the mortgagor to act in all respects as owner of the vessel; and if he has authority to act as owner, he has of necessity authority to enter into all those contracts touching the disposition of the ship which may be necessary for enabling him to get the full value and benefit of his property.”

Therefore the proposition of law governing the case is, that the mortgagor has full power to deal with the ship provided he does not materially impair the value of the mortgagee's security. I take it that it lies on the mortgagee to satisfy the Court that this charter-party would materially prejudice his security; and I am not satisfied on reviewing the evidence that he has discharged this burthen of proof. I think that he has failed to show that carrying out the charter-party would impair his security.

It is a case in which the principle laid down in *Collins v. Lamport* (1) applies, and I must order the release of the vessel.

I do not think it is a case for costs.

Solicitors—Waltons, Bubb & Walton, for plaintiffs; T. Cooper & Co., for intervenor.

ADMIRALTY. }
1880. }
July 19. }

THE SINGUASI.

Collision—Towage—Responsibility of Pilot for Tug.

When a steam-tug, towing a vessel on board of which is a pilot, whose employment is compulsory, without orders from such pilot adopts a wrong manœuvre, the owners of the ship are responsible for the consequences, as the pilot cannot be perpetually giving orders as to the steering of the tug.

This was an action by the Company of Proprietors of the Regent's Canal against the barque *Singuasi* for damages to a pier, the property of the plaintiffs. The owners of the *Singuasi* denied their liability, on the ground that the collision with the pier had been caused by the default and neglect of duty of the pilot. It was proved that the *Singuasi* was coming up the river in tow of the tug *Warrior*; that in Limehouse Reach the navigation was difficult owing to the crowded state of the river. The tug, when nearing the Regent's Canal, without orders from the pilot, suddenly ported to pass to the north of a dumb barge and two sailing barges, and pulled the *Singuasi* towards the pier. The pilot had to port the helm of the *Singuasi* to clear the dumb barge, but having done so, he put her helm starboard to try to clear the pier, but she nevertheless collided with it.

Butt and Clarkson, for the plaintiffs.

Myburgh and Hill, for the defendants.

SIR ROBERT PHILLIMORE.—This is a case arising out of a collision which took place between twelve and one o'clock in the afternoon of the 4th of October, 1879. The barque *Singuasi*, the vessel proceeded against, was going up the Thames in tow of the tug *Warrior* and struck the pier of the plaintiffs, doing considerable damage. The collision and damage are admitted by the defendants, but they contend that the *Singuasi* did the damage through the negligence of a Trinity House pilot, whose employ-

The Siquasi, Adm.

ment was compulsory, and that he alone was therefore to blame. Now, the question mainly turns upon the conduct of the tug towing the *Siquasi* in porting her helm and going to the north of the dumb barge and two sailing barges which were going up the river. It is admitted that if there was sufficient room to pass between the two barges, it was the duty of the tug to go between them. We think there was sufficient room, the pilot swearing positively to this effect. It was therefore a wrong manœuvre of the tug to port, and this was the primary cause of the collision. It is said that the pilot delegated his authority, not in terms but in conduct, to the master of the tug. We are not of this opinion. It is not necessary that the pilot should be giving orders perpetually to the tug. When the latter suddenly ported without his order, the *Siquasi* was obliged to follow him. The tug is the servant of the ship, and the *Siquasi* is therefore responsible for what the *Warrior* did. We believe that the pilot starboarded as soon as he could after clearing the dumb barge; but the *Siquasi*, owing to her length, could not recover herself in time to prevent the collision. We therefore hold the *Siquasi* to blame for the collision, which was not caused by any default of the pilot.

Solicitors—Jenkinson & Olivers, for plaintiffs;
T. Cooper & Co., for defendants.

ADMIRALTY. }
1880. }
Aug. 8. }

THE MACLEOD.

Forfeiture of Wages—Master—Habitual Drunkenness.

A master who is proved to have been habitually and grossly drunk on a voyage may thereby forfeit the whole of his wages.

This was an action by the late master of the ship *Macleod*, for wages and disbursements. The plaintiff had served on the *Macleod* from the 1st of June, 1879, to the 18th of June, 1880, for wages, at

the rate of 250*l.* a year. He sued for the sum of 337*l.* 9*s.* 4*d.*, being the balance of wages due to him, together with ten days' double pay, according to the Merchant Shipping Act, 1854. The defendants denied their liability, on the ground that the master had forfeited his claim, having been grossly and habitually drunk, at sea and on shore, and in consequence had been guilty of neglect of duty and watchfulness. Questions also arose as to the disbursements and in regard to a counterclaim by the defendants for damages in respect of a charter-party entered into by the plaintiff contrary to their orders. These two points were referred to the Registrar and merchants for decision.

Butt and Clarkson, for the plaintiff.

Myburgh, for the defendants.

After the facts above stated had been proved by evidence, judgment was delivered on the question of the forfeiture of the plaintiff's wages.

SIR ROBERT PHILLIMORE.—In this case the master is suing for his wages, and he is proved to have been guilty of not occasional, but habitual intoxication. In the case of *The Roebuck* (1) I had occasion to consider the law very fully, and it may be desirable, as I am obliged to come to a decision adverse to the suitor in this case, that I should state my view of the law as I think it is. I cannot do better than read the following passage from the judgment of Lord Stowell in the case of *The Exeter* (2): "Upon the matter of drunkenness the Court will be no apologist for it. It is an offence peculiarly noxious on board a ship, where the sober and vigilant attention of every man, and particularly the officers, is required. At the same time the Court cannot entirely forget that it is a mode of life peculiarly exposed to severe peril and exertion, and therefore admitting in seasons of repose something of indulgence and refreshment; that indulgence and refreshment are naturally enough sought by such persons in grosser pleasures of that kind; and therefore that

(1) 3 Asp. Mar. Cas. 287; 37 Law Times, N.S. 274.

(2) 2 C. Rob. 261.

The Macleod, Adm.

the proof of a single act of intemperance committed in port is no conclusive proof of the disability for general maritime employment."

And in the case of *The Lady Campbell* (3) the same learned Judge said, "I learn from one or two witnesses that he, the plaintiff, had been drunk once or twice on the whole of the outward voyage, which lasted nine months. Now though this Court does not mean to countenance any criminal excess of that kind, yet it cannot so far blind itself to the ordinary habits of men living for such a length of time in a frequent condition of extreme peril and fatigue as to feel much surprise that a seaman having command, as this man from his station had, of strong liquors, should have been betrayed into two acts of indulgence of that nature, nor can it consider them as sinking him below the common average of a seaman's morality."

In the case of *The Thomas Worthington* (4) my learned predecessor said, "Cases indeed may occur, even in this Court, where the misconduct may be of so gross a description that, independent of any actual loss sustained by the owners, the entire forfeiture of wages would ensue, as, for instance, if a master had attempted to commit a barratry, or if throughout the voyage he had shewn gross incapacity or had been constantly drunk. In either of these cases would this Court be justified in pronouncing for any part of his wages under a contract? Unquestionably not; and if any such case came before me, I should not hesitate for a single moment to reject the claim *in toto*."

I regret to say the evidence in this case is such that I must pronounce that the plaintiff has forfeited his wages.

Solicitors—Hollams, Son & Coward, for plaintiff;
J. M'Diarmid, for defendant.

PROBATE. } IN THE GOODS OF JOHN GEORGE
1880. } SUFFIELD MAYD.
Dec. 14. }

Will made in contemplation of Perilous Journey—Not Contingent.

J. M. being about to undertake a perilous journey in Australia, made his will. It commenced: "On leaving this station (Eulbertie, Cooper's Hill) for Thargomindah and Melbourne, in case of my death on the way, know all men this is a memorandum of my last will and testament." The will then disposed of all his property between his wife and children:—Held, that the will was not contingent upon the event of the testator's death on the journey he was about to undertake when the will was made.

John George Suffield Mayd, late of Cooper's Creek, Queensland, Anstralia, died on the 4th of May, 1879, at St. Kilda, in the colony of Victoria, leaving surviving him his widow, Robina Mayd, and three children—two sons and a daughter. The only document of a testamentary nature found among his papers was the following:—

Canada Five per cent.	£1400
New Zealand	500
West Hartlepool Railway	900
India Four per cent.	1000
New Three per cent. Consols	85
Great Eastern Railway	735
Mrs. May's Bank, Victoria.	400

£5,020

"Eulbertie Station, Cooper's Creek, Queensland.

"23rd August, 1878.

"On leaving this station for Thargomindah and Melbourne, in case of my death on the way, know all men this is a memorandum of my last will and testament.

"I leave my wife, Robina Mayd, and my brother, William Mayd, barrister of the Inner Temple, London, and now recorder of Bury St. Edmund's, in the county of Suffolk, England, my sole executors of said will. As long as my wife Robina Mayd remains unmarried, and no longer, said Robina Mayd is to have the control of the interest of the above five thousand and twenty pounds invested as above, to be applied for the maintenance

(3) 2 Hag. 5.

(4) 3 W. Rob. 128.

In the goods of John George Suffield Mayd, Prob.

and benefit of herself and children.—Emily Elizabeth, my daughter, John Herbert Mayd, my second and youngest son, and, if it be required, my eldest son, Jeffray Mayd, with the advice of the said William Mayd, barrister. . . .

"It is to be clearly understood that I wish my property to be for the benefit of my wife and children, and on my wife's death, the capital to be divided into four parts, namely, one-quarter to William Jeffray Mayd, one-quarter to John Herbert Mayd, one-half to Emily Elizabeth Mayd, &c. &c.

"Signed this 23rd day of August, 1878," &c. &c.

The will was duly executed by the deceased in the presence of two witnesses who subscribed and attested it.

It appeared from the affidavit of Mrs. Robina Mayd, the widow of the deceased, that her husband joined her in Melbourne after the completion of his journey from Queensland; that when they were residing together he received the said will by post from a friend with whom he had deposited it at Cooper's Creek before he left upon his said journey, and that after its receipt it was deposited by him in his writing-desk, where it remained up to the time of his death; that the testator spoke to her on several occasions after he had arrived in Melbourne with reference to the provision which he had made for his daughter by his will, and that he informed her that he had left his daughter the half of all his property, whatever it might be, including the money left him in trust by his aunt's will; and, finally, that according to the best of her knowledge, information and belief, the testator did not by any deed or writing otherwise than by the will in question exercise the power of appointment given to him by the will of Elizabeth Mayd, deceased, his aunt.

Mr. William Mayd, of No. 1 Elm Court, Temple, barrister-at-law, and recorder of Bury St. Edmund's, deposed that the several investments enumerated at the head of the will were part of the securities held in trust by deponent as the executor and trustee of the will of Elizabeth Mayd, late of the city of Bath, spinster, deceased, probate of which will

was granted to him on the 24th of August, 1870, by the Bristol District Registry of Her Majesty's Court of Probate; that under and by virtue of the said will of the said Elizabeth Mayd deceased, the testator was entitled to a life interest in a sum of 5,000*l.*, with a power of appointment of the said sum in favour of his children; and that, according to the best of deponent's knowledge, information and belief, the testator did not by any deed or writing, otherwise than by the paper writing in question, exercise the power of appointment given to him by the will of the said Elizabeth Mayd.

Inderwick moved the Court to decree probate of the will. Though the testatrix had used equivocal terms, it was not conditional. He referred to *In the goods of Dobson* (1); *In the goods of Pater* (2).

THE PRESIDENT (SIR JAMES HANNEN).—I entertain no doubt that I ought to grant probate of this will. The meaning of general phrases of this kind is, "knowing the uncertainty of human life, and being about to enter on something particularly dangerous, I make this my will." I think the Court ought not to scrutinise those expressions with too great nicety. I observe that *In the goods of Pater* (2) Lord Penzance says that if the will had stopped at the end of the first sentence it would have fallen within the first class of cases to which he referred. That is exactly where it does stop here: "On leaving this station for Thargomindah and Melbourne, in case of my death on the way, know all men this is a memorandum of my last will and testament." The words relied on by Lord Penzance as leading to a different conclusion, namely, those in which the testator goes on to say—I wish everything that I may be in possession of at that time to be divided, &c. At what time? His death while abroad." There is nothing of that kind here. I therefore admit the will to probate.

Solicitors—Young, Jones, Roberts & Hall.

(1) 35 Law J. Rep. Prob. & M. 54; Law Rep. 1 P. & D. 88.

(2) Law Rep. 2 P. & D. 23.

ADMIRALTY. }
1880. }
June 29. }

THE SILESIA.

Salvage—Inequitable Agreement—Costs.

The Court will set aside an agreement to pay salvage remuneration when the amount agreed to be paid to the salvors is so exorbitant as to be inequitable, and will decree a reasonable sum in place thereof. Under such circumstances each side must pay its own costs of the action.

The *Medina* (45 Law J. Rep. P., D. & A. 81; Law Rep. 1 P. D. 272; on appeal, Law Rep. 2 P. D. 5) followed.

This was an action of salvage by the owners, master and crew of the steamship *Vaderland* against the steamship *Silesia*, her cargo and freight. The plaintiffs relied on an agreement made before the services were rendered, which the defendants pleaded was inequitable, and signed by the master of the *Silesia* under compulsion.

Butt and Clarkson, for the plaintiffs.

Webster and Phillimore, for the defendants, relied on *The Medina* (1).

The facts of the case are fully set out in the judgment.

SIR ROBERT PHILLIMORE.—This is a case of salvage service of very considerable merit, and upon that point there is no dispute whatever. The only question for the Court to decide is, whether, having regard to all the principles on which salvage remuneration is awarded, the sum of 15,000*l.*, which was the sum agreed upon between the two captains, is so exorbitant as to induce the Court to set the salvage agreement in this case aside. The short history of the case is this: The *Vaderland*, a screw-steamship of 2,748 tons register, with engines of 300 horse-power, working up to 1,800 horse-power, was on a voyage from Antwerp to Philadelphia, laden with a general cargo, and carrying mails and 274 passengers. That there were these passengers on board is a most important element in this case. The mails were carried under a subsidy

(1) 45 Law J. Rep. P., D. & A. 81; Law Rep. 1 P. D. 272; on appeal, Law Rep. 2 P. D. 5.

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from the Belgian Government, and the owners of the *Vaderland* were under penalties not to deviate or delay. The *Vaderland* had a crew of seventy-six hands, and her value, added to the value of her cargo and freight, was 72,700*l.* The vessel to which the salvage service was rendered in this case was the *Silesia*, and she had sixty-two passengers on board, with a crew of ninety-five hands, and was of 3,156 tons gross register, and, with her cargo and freight, was of the value of about 108,000*l.* The *Silesia* was going from New York to Hamburg, and at the time when the accident happened she had got within 340 miles or thereabouts of Queenstown. On the morning of the 21st of March in this year the *Silesia* broke her propeller or screw-shaft in the stern tube, and the consequence was that she became utterly inefficient so far as her steam power was concerned. The weather was fine and the sea was smooth, but after tossing about for four or five days, and having only got about seven miles from the place at which the accident happened, she hoisted signals of distress. On the 26th of March the *Vaderland* bore down upon her. What passed between the two captains it is better to state in their own words, both having regard to the importance of the principles involved and the great value of the salvaged ship herself. The statement of Captain Nickels of the *Vaderland* is as follows:—

“Ludvig, the captain of the *Silesia*, asked me to tow him into a safe port. I said I could not do it because I had instructions from my owners. Then he said, ‘What am I to do? I cannot steer the ship.’ After a little while I said, ‘I will break my instructions for 20,000*l.*’ He said that was rather too much, and mentioned 12,000*l.*”

(That is a statement denied by the other captain.)

“I said I would not run the risk for that money. Then he made an offer of 15,000*l.*, and I said Yes.”

Captain Ludvig’s account is this:—

“Captain Nickels took me into his room, and I said I had been trying to sail for five days, but having the wind against me I could make no way. I thought I had better not try

The Silesia, Adm.

any longer, and I requested him to tow me. Nickels said he had instructions not to tow any ship, as they had been taken in before, except for a certain sum of money, and then to give him a written agreement. I asked what he wanted. I said we had a case a couple of years ago and we had to pay 4,000*l.* for it, and 5,000*l.* would be about the money. He said, 'No, 20,000*l.*' I said I was astonished, as it was an enormous sum, and they would never pay so much. I insisted on 5,000*l.*, and he insisted on 15,000*l.* I thought it was a great sum, and he threatened to leave me unless I signed for 15,000*l.*"

The agreement was in these words:—

"We have this day made agreement as follows: Captain Nickels engages to assist the *Silesia*, with broken shaft and disabled, and tow her to Queenstown to anchorage. For this service Captain Ludvig makes the company responsible for the above-mentioned service for the sum of 15,000*l.*"

The *Vaderland* took the *Silesia* in tow, and in about three days they accomplished 340 miles; and at the end of six days the *Vaderland* had again reached the vicinity of the spot where she had fallen in with the *Silesia*. That was the time she lost, and it was very strongly contended on her behalf that she had rendered herself liable to penalties under her mail contract for the deviation she had made from the course of her voyage. On that I may observe that any question as to these penalties has been disposed of by an arrangement made in Court between the parties. So far, therefore, this question is disposed of. The captain of the *Silesia* in his evidence referred to instructions given him not to deviate from his voyage or delay the ship to render any assistance to other vessels than those belonging to his owners, except for saving life. On the other hand, the bills of lading and policies of insurance provide for liberty to the *Vaderland* to "assist all vessels in all situations." I do not think that these instructions to the master of the *Vaderland* can be pressed as affording any guide to the Court in ascertaining the amount of salvage remuneration to be awarded for the services rendered. There is a

large sum mentioned as the estimated loss on the charter of the screw-steamer *Helvetius*, which was employed in consequence of the derangement of the service on which the *Vaderland* was employed. The loss on this head I do not estimate at more than 500*l.* The question the Court has to consider is, whether the agreement made between the captains is an agreement which is so exorbitant that, in accordance with decided cases and the principles on which they are founded, the Court ought to set it aside. I should say that, in order to assist the Court in arriving at a conclusion upon this subject, it is necessary to consider—and I have considered carefully, with the assistance of the elder brethren of the Trinity House—whether the owners of the *Silesia* would or would not have been justified in calling for the assistance of the *Vaderland*, and in accepting the terms which the captain of the *Vaderland* asked. After the best consideration of this case, and considering the principles of other analogous cases, I have come to the conclusion, and the elder brethren agree with me, that the sum specified in the agreement is so exorbitant that the Court ought to exercise its equitable jurisdiction, and not to assist in the carrying of it out. Looking to all the circumstances of the case, I have come to the conclusion that the proper sum to award as salvage remuneration will be 7,000*l.*, to cover everything but the penalties. The question of costs must stand over for argument.

Subsequently, upon the question of costs,

SIR ROBERT PHILLIMORE said—Upon the principle on which this Court and the Court of Appeal acted in the case of *The Medina* (1), I order that each party to the suit shall bear his own costs.

Solicitors—Hollams, Son & Coward, for plaintiffs;
Lowless, Nelson & Co., for defendants.

PROBATE. }
 1880. }
 Dec. 22. } *In the goods of WILLIAM*
 1881. } *EWING (deceased).*
 Jan. 25. }

Will made in India—Personal Estate of Deceased (with exception of a few articles of trifling value) situate in Scotland—Will proved in Scotland—Application by Legatee for a Grant of Administration with Will annexed or an Order on Executors to prove Will in England refused.

A died in India, leaving a duly executed will, wherein he named H. a legatee, and appointed executors. His personal estate (with the exception of a few articles in this country, of trifling value) consisted of claims on the estate of B, his uncle, which was situate in Scotland, and was being there administered. The executors of B's will obtained confirmation of it in Scotland, including the inventory of his effects, all his property, wherever situate, within the United Kingdom, and the inventory was duly sealed in the principal registry of the Court of Probate. In these circumstances, the Court refused to make an order on the executors of A who had proved his will in Scotland to prove the will also in this country or to grant administration (with the will annexed) to H., holding that no necessity or duty towards the applicant or the estate of the deceased at present appeared for the executors to take probate in England, and that until such necessity or duty arose the Court was not called upon to decide, in default of their doing so, to whom administration should be granted.

This was a proceeding by way of citation on the part of a legatee to compel the executors, who had obtained confirmation of the testator's will in Scotland, where his personal estate was nearly wholly situate, to prove the will also in this country, or to have a grant made to himself of administration (with the will annexed). The facts are so fully set out in the judgment of the Court that it is unnecessary to recapitulate them.

Inderwick (with him *Buyford*), appeared on behalf of B, in support of the application.

Dr. Deane (with him *Dr. Tristram*), on the part of the executors, opposed it.

In the goods of Cood (1), *Lyon and Another v. Balfour and Others* (2), *Currie v. Bircham* (3), *Williams on Executors*, p. 1,159, 7th ed., were referred to in the course of the argument.

Our. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN).—This is a proceeding by citation issued by George Wellesley Hope, a legatee in the will of William Ewing, deceased, against Archibald Orr Ewing and William Ewing, to accept or refuse probate of the said will as executors named therein, and against James Ewing to accept or refuse letters of administration (with the will annexed), as the natural and lawful father of the deceased, or that they should shew cause why administration, with the will annexed, should not be granted to G. W. Hope as legatee.

The parties cited have appeared, but shew for cause against administration being granted to the applicant that they are not bound to accept or refuse probate or administration, inasmuch as the executors had already proved the will in Scotland, where alone there were any assets.

The deceased William Ewing died in India on the 26th of December, 1878, having by his will, dated the 23rd of December, made the following bequests: To Sarah Jane Ewing, his stepmother, "30,000*l.*, to be realised and paid out of my share in the will of my late uncle, John Orr Ewing, who died last year. And out of the said share in the said will I also bequeath 10,000*l.* to my friend George Hope. The remainder of my share from the said will to be divided equally amongst my brothers." The said will contained no disposition of the general residue, to which, therefore, the father of the deceased would be entitled as next-of-kin. The personal estate and effects, which it is alleged by the applicant were left by the testator within the jurisdiction of this Court, are thus de-

(1) 36 Law J. Rep. Prob. & M. 129; Law Rep. 1 P. & D. 449.

(2) Add. Ec. Rep. 501.

(3) 1 Dowl. & Ry. 35.

In the goods of Ewing, Prob.

scribed: "First, One-sixth part of a legacy of 60,000*l.*, and one-sixth of the residue of the estate of the late John Orr Ewing, which estate consists of property partly in England and partly in Scotland. Second, A library of books. Third, A silver tea kettle and silver tea set." The second and third items are valued respectively at 15*l.* 16*s.* and 13*l.* 2*s.*

William Ewing and Archibald Ewing, the persons named in the will of the deceased as executors, are also, with four others, the executors of the trust disposition and settlement of the late John Orr Ewing; and these six persons are now administering the estate of the said John Orr Ewing, deceased, in accordance with the law of Scotland, in Scotland, the country of his domicile.

It is sworn and not denied that "the share of the deceased W. Ewing in the estate of the said John Orr Ewing cannot at present be realised and paid over to the executors of the will of the said W. Ewing, inasmuch as there are annuities given by the will of the said John Orr Ewing which have to be provided for, and like precedence covers the said legacy of 60,000*l.*, and after payment of the said legacy of 60,000*l.* there are legacies to the amount of 14,500*l.* which, under the will of the said J. O. Ewing, must be provided for, before the residue can be divided. The greater portion of the assets of the said J. O. Ewing consists of capital in a firm carrying on business in Glasgow, of which he was a member, and which, according to the articles of partnership, can only be drawn out by instalments spread over several years; and the said executors of J. O. Ewing have now a balance in hand of between 1,030*l.* and 1,050*l.* in Scotland payable to the estate of the said W. Ewing, but no more."

Upon these facts several questions have been suggested, but I do not think it necessary to express a definite opinion upon all of them. The main ground upon which this application has been based is, that the claim of the estate of W. Ewing on the estate of his uncle, John Orr Ewing, is an asset of W. Ewing's estate in England by reason of some of the assets of the uncle's estate having been in England at

the time of the death of W. Ewing, and therefore that the executors of W. Ewing's will ought to take probate in respect of those assets here.

It is not disputed that the deceased J. O. Ewing was a domiciled Scotchman, and that his will was properly proved in Scotland, and is being administered there in accordance with Scotch law. The claim of the executors of W. Ewing in respect of the interest of their testator under his uncle's will is a claim on the executors of the uncle duly to administer his estate, and to pay the legacy to W. Ewing out of the funds which may be applicable to that purpose. It cannot be disputed that this claim or interest in the estate of the uncle constitutes an asset of the estate of the deceased W. Ewing, because it is recoverable by the executors of W. Ewing *virtute officii*, but it appears to me that it is an asset in Scotland and not in England—*The Executors of Perry v. The Queen* (4), *Forbes v. Steven* (5).

The executors of J. O. Ewing have availed themselves of the provisions of the 21 & 22 Vict. c. 56. ss. 9 and 12, which enable the executors of a person who dies domiciled in Scotland to include in the inventory of his effects all his property, wherever situate, within the United Kingdom, and they have paid, or become liable to pay, in Scotland, probate duty on the property of the testator situate in England, and the Scotch confirmation has been duly produced in the principal registry here, and has been sealed with the seal of this Court, so that it now has the like effect as if probate had been granted here; but the place where the business of administering and winding up the estate of J. O. Ewing is being carried on is Scotland, and any acts done in England by the executors of J. O. Ewing are only ancillary to the administration which is taking place in Scotland.

I am not aware that the point has been the subject of judicial determination, but all analogies seem to lead to the

(4) 38 Law J. Rep. Exch. 5; Law Rep. 4 Exch. 27.

(5) 39 Law J. Rep. Chanc. 422; Law Rep. 10 Eq. 178.

In the goods of Ewing, Prob.

conclusion that Scotland is the local situation of the assets of W. Ewing. Thus the share of a deceased partner in a partnership asset is situate where the business is carried on, and shares in a company are locally situate where the head office is—*Hanson on Probate Acts*, &c., p. 161; *The Attorney-General v. Higgins* (6). And the fact that some of the assets of J. O. Ewing were situate in England does not appear to make any difference. If I were to constitute the applicant administrator, with the will annexed, of W. Ewing, he could not in that character take possession of, or recover the outstanding assets of the uncle's estate. He could not claim those assets himself *virtute officii*: his only remedy would still be through and by means of his claims upon the executors of the uncle to have his estate duly administered. It is indeed possible that a Court exercising equity jurisdiction here would interfere at the instance of the representative of W. Ewing's estate to prevent the assets of J. O. Ewing's estate in England being wasted or applied in a manner inconsistent with the rights of persons in this country interested in W. Ewing's estate—*Pardo v. Bingham* (7). But this is on the supposition that the executors of J. O. Ewing have done, or are about to do, something inconsistent with their duty to the estate of W. Ewing. No suggestion of this kind is made in the affidavits on which this application is founded, and I have therefore nothing before me to shew that there is anything which makes it the duty of the executors of W. Ewing to take any proceedings against the executors of J. O. Ewing in England, and so no necessity appears for substituting anyone in the place of the executors of W. Ewing to discharge a duty neglected by them.

If the applicant should be advised that any such necessity can be established, the facts relied on must be shewn by affidavit, but I must add that if, as is alleged, the English assets of J. O. Ewing

have, in the course of administering his estate, been removed to Scotland, I doubt whether a Court of equity would now interfere with their being dealt with in accordance with Scotch law.

But it was further contended that the legacy to Mr. Hope is a demonstrative legacy, and that he therefore has a claim on the general estate of the deceased W. Ewing, and that some of the assets of that estate, namely, the books and plate, were in England at the time of W. Ewing's death.

It is not necessary for me to determine whether this legacy is demonstrative, because, assuming that it is, I do not consider that in the existing state of facts I ought to grant the administration asked for to the applicant.

This is not, as now presented to the Court, a matter of legal right. It is an application to the discretionary power of the Court on the non-contentious side of its jurisdiction. The Court is not bound to grant administration to a legatee as it is to the next-of-kin whose rights are derived from statute—*The Queen v. Bettesworth* (8); and in those cases which are not within the statute of administration the Court is left to the exercise of its discretion in the choice of an administrator, and no person has such a legal right to preference as can be enforced at law—*Williams on Executors*, p. 444.

What case is then made out for the exercise of the discretion of the Court in favour of the applicant? It cannot be supposed that these proceedings are really taken to enable the applicant, in the apparently improbable event of W. Ewing's estate proving insufficient to pay the legacy of 10,000*l.*, to have recourse to the assets of W. Ewing in England valued at 28*l.* 18*s.* There is nothing to contradict the statement of the executors of W. Ewing that there are or will be ample assets in Scotland of J. O. Ewing's estate to pay the legacy to the nephew with which to satisfy the bequests of his will. This being so, it does not appear to me to be the duty of the executors of W. Ewing to take any proceedings to recover from James Ewing, the father of W. Ewing, the books and plate which were in his

(6) 26 Law J. Rep. Exch. 403; 3 Hurl. & N. 339.

(7) 39 Law J. Rep. Chanc. 170; Law Rep. 6 Eq. 485.

(8) 2 Str. 956.

In the goods of Ewing, Prob.

possession at the time of his son's death, and to which he is entitled as next-of-kin, unless the share of the estate of the uncle should prove insufficient to meet the legacies left by W. Ewing. Should the time arrive when it shall appear that recourse is necessary in England to the 28l. worth of books and plate to make up the applicant's legacy, I shall be willing to consider whether, and to whom, in the exercise of my discretion, I should grant administration with respect to these articles. The administration would in that case be limited to the property not disposed of by the will. In the meantime the applicant is not precluded from taking proceedings for the recovery of his legacy in Scotland, where the executors of W. Ewing will be liable, as for a *devastavit*, if they neglect at the proper time to collect any assets legally applicable to the payment of the legacies.

One or two other points were adverted to at the hearing but not argued. One was as to the domicile of W. Ewing at the time of his decease. It is unnecessary to pursue this enquiry, as I hold that W. Ewing had substantial assets in Scotland in respect of which it was proper and necessary that probate should be taken in that country.

Another point adverted to was that either the executors of W. Ewing or James Ewing, his father, may be liable to penalties for dealing with the books and plate without proving the will or taking administration here. But this is not the question I have to determine. It is for the revenue authorities to judge whether this is a proper case in which to take proceedings for such penalties.

On the whole I feel bound to reject this application on the ground that no necessity or duty towards the applicant or the estate of the deceased at present appears for the executors to take probate in England, and that until such necessity or duty arises I am not called upon to decide, in default of their doing so, to whom administration should be granted.

A similar application was made in chambers on behalf of Mrs. Sarah Jane Ewing, with this additional circumstance, that it was stated that a representation of the estate of W. Ewing was necessary

for the purposes of a suit now pending before the Master of the Rolls between Mrs. Ewing and her husband, James Ewing. The executors of W. Ewing deny that it is necessary for the purpose of the said suit that probate of his will should be obtained in England. In this state of things I thought it expedient to enquire of the Master of the Rolls whether the suit was properly constituted without the executors of W. Ewing being made parties in their representative capacity, and he informs me that he considers that it is. I therefore refuse Mrs. Ewing's application, as well as that of Mr. Hope.

Solicitors—Stibbard, Gibson & Co., for Mr. Hope;
Johnsons, Upton & Co., for parties interested.

PROBATE. } STOCKIL AND OTHERS v. PUNSHON
1880. } AND OTHERS.
Nov. 13. }

Codicils—Enumeration of—Incorporation.

Testator executed six codicils, enumerating each as "This is a first codicil to my will," "This is a second codicil," &c., and so on throughout the whole of the six codicils, but the third codicil by inadvertence was not duly executed:—Held, that the mere enumeration of the codicils did not make the last executed a sufficient recognition and confirmation of the third codicil.

Sir Isaac Morley, late of Beechfield, in the county of York, knight, died on the 1st of December, 1879. On the 31st of August, 1872, he made a codicil to his will, and thereby bequeathed a sum of 2,000l. to the Doncaster Grammar School for the purpose of founding a scholarship to be called the "Morley Scholarship." On the 11th of December, 1876, he made another will whereby he revoked the previous will and codicil, and on the same day he also made a "temporary codicil," by which he provided that the codicil for founding the "Morley Scholarship" should remain in force until he executed another codicil for the same purpose. He subsequently signed six other codicils,

Stockil v. Punsdon, Prob.

the third of which provided for the "Morley Scholarship," but this codicil was by inadvertence not signed by one of the attesting witnesses. Each codicil was distinguished by enumeration—that is, it commenced, "This is a first codicil to my will," "This is a second codicil to my will," and so on throughout the six codicils.

The executors propounded the documents, and asked for probate of the third codicil as incorporated in or confirmed by the subsequent codicils, or of the temporary codicil of the 11th of December, 1876, and of the codicil of the 31st of August, 1872, as incorporated and confirmed by it. All the residuary legatees had been made parties to the action. They appeared but did not plead.

Dr. Tristram, for the plaintiffs, the executors, submitted that the enumeration of the codicils to the second will was sufficient to incorporate the third codicil—*Ingoldby v. Ingoldby* (1), *Burton v. Newbery* (2). It was, however, immaterial to the parties whether the codicil was pronounced for, as the temporary codicil and the earlier one which it revived were to the same effect.

THE PRESIDENT (SIR JAMES HANNEN).—There being no opposition, and the effect of the papers being the same, it is not necessary for the purposes of the case that I should consider the matter further. I shall act upon my present impression that the mere enumeration of the codicils does not make the last executed a sufficient recognition and confirmation of the earlier document, which turns out not to have been duly executed. The temporary codicil does undoubtedly keep in force the earlier codicil to the will of 1872, and therefore that codicil of 1872, together with the temporary codicil, must be admitted to probate.

Solicitors—Van Sandau & Cumming, agents for F. W. Fisher, Doncaster, for all parties.

(1) 4 Notes of Cases, 493.

(2) 45 LAW J. Rep. Chanc. 202; LAW REP. 1 Ch. D. 234.

PROBATE.

1880.

Nov. 14

Dec. 14.

} In the goods of LYDIA ELIZA SHEARN (deceased).

Will—Interlineation after Execution—Will as altered approved of by Testatrix as "her last will and testament"—Interlineations initialed by Witnesses—Probate of Interlineations refused.

Testatrix duly executed her will in the presence of two witnesses, who subscribed and attested it. Immediately after its execution an omission was discovered in the will, and this omission was supplied by an interlineation. Testatrix approved of the will as altered, acknowledging it as her "last will and testament," and the witnesses then, in her presence, placed their initials in the margin opposite the interlineation:—Held, that there had been no re-execution of the will, and that consequently the interlineation should be omitted from the probate.

Lydia Eliza Shearn, widow, died on the 11th of January, 1880. On the 1st of December, 1879, she gave verbal instructions for her will to one Richard Cooper Christie, stating that she wished to give the property of which she might be possessed in equal shares to one William Gibbs (whom by a previous will she had named universal legatee) and Martha Dowding. Christie prepared the fresh will, which revoked the previous instrument, and the paper was duly executed by the testatrix in his presence and in the presence of one Gale, who subscribed and attested it. On reading over the paper Christie discovered that he had omitted the legacy to Gibbs, and he thereupon interlined the words following the legacy to Martha Dowding, "The other half I bequeath to Mr. William Gibbs, of Nettleton, Wilts." The paper was then read over anew to the testatrix, who approved of it, and acknowledged it to be her last will and testament, and thereupon Christie and Gale placed their initials in the margin of the paper, opposite the interlineation, in her presence. These were the facts of the case, as deposed to by the witnesses.

In the goods of Shearn, Prob.

Latham, on behalf of William Gibbs, moved the Court to decree probate of the will with the interlineation. What had taken place in relation to the interlineation amounted to a re-execution of the will.

Our. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN).—The testatrix died in January of this year, having made and duly executed her will; and application for probate is made by a legatee, to whom money is left by what appears, on the face of the will, to be an interlineation. The facts, as they are presented to me, are these: The will, without the interlineation, was duly executed by the testatrix, and attested by two witnesses. After that execution of the instrument it was discovered that something which it is alleged the testatrix desired should be in the will, had been omitted, and thereupon the interlineation, consisting of these words, "All the other half I bequeath to so and so" (the applicant), were introduced. The testatrix expressed her approval of it, and it is contended that what she said was an acknowledgment of her mark as a re-execution of the will in its altered form. But the witnesses did not re-attest her signature. All that they did was to place their initials before the alteration. I come to the conclusion that the interlineation must be omitted, and, consequently, that the application for probate of the will with the interlineation must be rejected. I have already observed that what the testatrix did was to execute a will, which is different to that which is now presented for proof. That execution was attested by the witnesses, and so a complete testamentary instrument was brought into existence. Without professing any opinion as to whether the acknowledgment of the alteration was sufficient, at any rate it has never been attested by the witnesses. All that they have done was done with another purpose, namely, to signify that the alteration was made in their presence. At the time this matter was first before me I expressed my doubt on the subject, but I was not referred to any authority. Since then I have been referred to an authority, which

appears to be in exact accordance with this case. It is the case of *In the goods of Elisabeth Woods Martin* (1), which was decided by Sir Herbert Jenner Fust. In that case interlineations were made in the will, as the attesting witnesses deposed, after the first, but prior to a second execution by the testatrix, when she acknowledged her signature in their presence, and they attested such second execution by placing their names in the margin opposite to the alterations; and Sir Herbert Jenner Fust said, "The signatures of the attesting witnesses alone appear in the margin near to the alterations. All the information respecting such alterations is contained in the affidavit of the attesting witnesses, wherein they say 'they duly attested the said last-mentioned execution of the said will by signing their respective initials opposite and against the said respective recited alterations.' There is no evidence that they subscribed the second execution of the will, though they may have intended to do so; as the instrument appears on the face of it they attested the alterations only. I am of opinion I must reject the motion so far as it relates to the re-execution, and grant probate of the will as it originally stood." My decision proceeds on this ground, that when a second execution is alleged to have taken place that second execution must have been attested by the witnesses. In this case there has been no attestation by the witnesses. The application must be rejected.

Solicitors—Wood, Latham & Bigg, agents for
W. & F. Awdry & Clarke, Chippenham.

[IN THE COURT OF APPEAL.]

DIVORCE. }
 1880. } HARVEY (otherwise FARNIE)
 Dec. 14, 17, } v. FARNIE.*
 20. }

Marriage in England between a Domiciled Scotchman and Englishwoman — Marriage dissolved by Decree of Scotch Court for the Husband's Adultery only — Validity of Decree.

A domiciled Scotchman married an Englishwoman in England in 1861. After the marriage he returned to Scotland with his wife, and remained there domiciled till 1863, when the marriage was, upon the petition of the wife, dissolved by a decree of the Scotch Court, by reason of the husband's adultery, not coupled with cruelty:—Held (affirming the decision of the PRESIDENT), that the decree was valid and binding on the Courts of this country, although at the time of the marriage the lady was an Englishwoman, and the decree had been granted upon a ground which would not have justified a divorce in England.

The bona fide domicile of the husband, which upon the marriage becomes also that of the wife, is the test for determining by what law all the incidents of the status of the parties to the marriage contract are to be governed. The *lex loci contractus* governs the forms and solemnities by which the marriage is celebrated.

Divorce is an incident of the status to be disposed of by the law of the domicile of the parties.

Whether an English husband can, by going to a foreign country where marriages are dissoluble at pleasure, for the purpose of acquiring a domicile there, obtain a valid and effectual divorce, *quære*.

Lolley's Case (Russ. & R. 237; 2 Cl. & F. 567) distinguished.

McCarthy v. De Caix (2 Russ. & M. 614; 2 Cl. & F. 568) commented on and explained.

This was an appeal from a decision of Sir J. Hannen.

The case is reported 49 Law J. Rep. P., D. & A. 33.

* *Coram* James, L.J.; Cotton, L.J.; and Lush, L.J.

VOL. 50.—P., D. & A.

The respondent, a domiciled Scotchman, married in England an Englishwoman, on the 13th of August, 1861. After their marriage he returned to Scotland with his wife, and remained domiciled there until after 1863, when his wife obtained from the Scotch Court at her instance a decree for dissolution of the marriage, by reason of the husband's adultery only. On the 31st of March, 1865, his former wife being still alive, he married in England the present petitioner.

The petition was presented for a declaration of nullity of the second marriage, on the ground that there was no valid decree of divorce.

The President held that the decree of the Scotch Court was valid not only in Scotland, but also in England, and dismissed the petition.

The petitioner appealed.

Fooks and Benjamin (Horace Davey and W. C. Fooks with him), for the appellant.—First, a marriage solemnised in England between a domiciled English subject and a domiciled Scotch subject of Her Majesty is an "English marriage;" secondly, such a marriage is indissoluble by the Court of Scotland, even when both parties are domiciled in Scotland, except upon grounds which would justify such a dissolution of English law; thirdly, a decree of the Scotch Court, even if valid within the territorial jurisdiction, has no extra-territorial effect, and is invalid in England, as contrary to the policy of the English law as regards matrimonial relations; fourthly, as an almost universal rule, *status*, so far as relates to the marriage contract, is governed, not by the law of the domicile, but of the place where the marriage is contracted.

This marriage between a domiciled Scotchman and an English lady, solemnised in England, according to the forms and ceremonies required by the English law to make it valid, is an "English marriage." The expressions "marriage solemnised in England" and "English marriage" are convertible terms—see *McCarthy v. De Caix* (1), where

(1) 2 Russ. & M. 614; 2 Cl. & F. 568.

D

Harvey v. Farnie (App.), Div.

Lord Brougham so translates the expression "English marriage," used by the Judges in *Lolley's Case* (2); and see *Tovey v. Lindsay* (3); and that the fact of the husband being a domiciled Scotchman did not necessarily make it a Scotch marriage is shewn by the observations made by Lord Colonsay in *Shaw v. Gould* (4), where he is referring to the marriage in *Warrender v. Warrender* (5); and the observations of Lord Westbury in the same case (pp. 86, 87).

This being, then, an English marriage, *Lolley's Case* (2) shews that it is indissoluble by the Scotch Court. That case, although it has often been attacked, is still law, and recognised as binding—*McCarthy v. De Caix* (1), *Tovey v. Lindsay* (3), *Dolphin v. Robins* (6), *Shaw v. The Attorney-General* (7); and whether the resolution in that case be adopted for its wider proposition—that is, that no foreign Court can dissolve an English marriage—or with the superadded qualification, unless upon grounds which by English law would justify a divorce, it governs the present case, as the divorce was upon the ground of the adultery of the husband, not coupled with cruelty.

The case of *McCarthy v. De Caix* (1) is a distinct authority in favour of the appellant, in which Lord Brougham, relying upon *Lolley's Case* (2), held that a divorce granted by decree of a Court in Denmark of a marriage in England between a domiciled Dane and an English lady had no effect in England, whatever might be its validity in Denmark (8).

It is sought to get rid of the effect of that case by some observations of Lord St. Leonards in *Geils v. Geils* (9), where

(2) Russ. & R. 237; 2 Cl. & F. 567.

(3) 1 Dow, 117, 124.

(4) 37 Law J. Rep. Chanc. 433; Law Rep. 3 E. & I. 55, 94.

(5) 2 Cl. & F. 488.

(6) 7 H.L. Cas. 390; 29 Law J. Rep. Prob. & M. 11.

(7) 39 Law J. Rep. Prob. & M. 81; Law Rep. 2 P. & D. 156.

(8) The record in this case was produced in Court and inspected by the Judges, who on such inspection were of opinion that the question as to the validity of the divorce was not raised in any way by the pleadings or upon the evidence.

(9) 1 Macq. H.L. 256.

he says that he does not remember the effect of the divorce being argued. But it appears from the judgment of Lord Brougham that there had been an elaborate argument with reference to *Lolley's Case* (2) before Lord Eldon, all of whose notes were then before Lord Brougham; and even if the point was not argued before Lord Brougham, the reason was that he was satisfied without argument; and Lord Brougham speaks of there having been there a valid decree of divorce. The resolution in *Lolley's Case* (2), as representing the unanimous decision of all the common law Judges, must be treated in the same way as the resolutions of the Judges in the time of Lord Coke, as laying down the general principles of law upon the subject, of universal application, and they must not be restricted merely to the particular circumstances of the case then under examination.

The result is, that, although a Court of a foreign country may have jurisdiction to carry out the laws of that country which govern the matrimonial relations there, it cannot pronounce a decree according to its own laws dissolving an English marriage unless (and this is a modification, we admit) the then domicile of the parties be in the country which grants the divorce, and then the divorce may be valid everywhere, if granted upon a ground recognised by the law of England as justifying a divorce.

The wife having by her marriage attained a Scotch domicile, if she had obtained from the Scotch Court a divorce for her husband's adultery coupled with cruelty, the Scotch Court in decreeing a divorce would have been enforcing the law of England—the *lex loci contractus*—and we admit that the divorce then would have been effectual everywhere.

Warrender v. Warrender (5) is not against us. That case only decided that a dissolution by a decree of the Scotch Court of a marriage between a domiciled Scotchman and an English lady was binding in Scotland, which we do not dispute. The Lords, in giving their opinions in that case, expressly so limit the effect of their decision by repeating that they

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were sitting as a Scotch Court of Appeal upon a Scotch question.

That case was followed by *Geils v. Geils* (9), where the Court only held that, the marriage being a Scotch marriage, the Courts in Scotland had jurisdiction in Scotland for Scotch purposes; but what the effect would be in England was another question which was not decided.

The case of *Maghee v. M'Allister* (10) is not really against us, for it proceeded on a mistake; and it is worth notice that, although it was decided in 1853, no reference was made to it in any of the subsequent cases of *Dolphin v. Robins* (6), *Pitt v. Pitt* (11) or *Shaw v. Gould* (4) in the House of Lords, or in the case of *Shaw v. The Attorney-General* (7). That case depends on *Warrender v. Warrender* (5) and *Geils v. Geils* (9); and the Lord Chancellor says that he was bound by those cases and the judgment of Dr. Lushington in *Comway v. Beasley* (12) and the case of *Munro v. Munro* (13) to treat the marriage in that case—that is, a marriage in England between a domiciled Scotchman and an Irishwoman—as a Scotch marriage.

But the cases do not warrant that conclusion. All that *Munro v. Munro* (13) decides is, that, by the law of Scotland, the subsequent marriage of parents legitimises their offspring born before marriage, and that a son born before marriage was capable of succeeding as heir-at-law to estates in Scotland; that the subsequent marriage, although it took place in England, had the effect of legitimising the children for the purpose of inheriting estates in Scotland; and Lord Cottenham in that case (p. 875) gives his view of the decision in *Warrender v. Warrender* (5), that, for civil purposes in Scotland, a marriage in England of a domiciled Scotchman was to be considered a Scotch marriage.

Divorce or no divorce is not an incident or a term of the marriage contract. An English marriage is in its terms something indissoluble, but the law says that

for certain specified causes the Courts may put an end to the contract.

The question is one of *status*. The law of England establishes the *status* of an Englishwoman who marries in England, whether she marries a foreigner or not; that is the *status* of a wife—a *status* not dissoluble except for special reasons; and any attempt by the husband alone, or by mutual agreement between the parties, to change that *status* by going elsewhere is of no effect. That *status* is fixed by the *lex loci contractus*; the wife in this case, though she acquired a Scotch domicile after the marriage, had an English domicile when she contracted the marriage, and Lord Redesdale in *Tovey v. Lindsay* (8) says that it could not be just that one party should be able at his option to dissolve a contract by a law different from that under which it was formed, and by which the other party understood it to be governed; and in *Niboyet v. Niboyet* (14) the Court would not allow the husband to change his wife's rights by altering his domicile. (See observations of James, L.J., in that case.) In *Shaw v. Gould* (4) it was held that though by Scotch law the parties had, by a residence of forty days, acquired a *domicilium fori*, there might be a divorce good in Scotland but not in England, and that the English Courts were not bound by any comity of nations to hold that the Scotch decree had changed the *status* of the English wife, that change of *status* being to the prejudice of English policy (15).

The foreigner who comes to England and marries an English wife, according to the law of England, thereby agrees, as far as in him lies, that the *status* of the wife shall be that of an English wife, and he must be assumed to come with the intention of submitting to the law of this country when he marries; and

(14) 48 Law J. Rep. P., D. & A. 1; Law Rep. 4 P. D. 1.

(15) Huberus. *De Conf. Leg.* lib. 1, tit. 3, s. 2: "Rectores imperiorum id comiter agunt ut jura ejusque populi intra terminos ejus exercita teneant ubique suam vim quatenus nihil potestati aut juri alterius imperantis ejusque civium prejudicetur."

(10) 3 Ir. Ch. Rep. 604.

(11) 4 Macq. Sc. Ap. 627.

(12) 8 Hag. Ec. 639.

(13) 7 Cl. & F. 842.

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while he is here the *status* of the wife is fixed (16).

[LUSH, L.J., referred to the Naturalisation Act of 1870.]

That was an enactment passed exclusively for political purposes, to prevent conflicts between this and other countries claiming the allegiance of the same persons. It was to enable persons *exure patriam*, where, but for it, a naturalised person might be driven to commit treason against the country of his origin or adoption.

If a domiciled Englishwoman were to go to Scotland to be married to a Scotchman, then it may be that she has thereby consented to submit herself to Scotch law, but it cannot be the law that a foreigner should have it in his power to take her to another country, whither she is bound to follow him, and where marriage can be dissolved—even for mere incompatibility of temper, as in Prussia—and where she may be subjected to a law of which she was wholly ignorant, and by which she had no intention of being governed when she married. We submit that domicile cannot settle the question. How can the Courts of England recognise the decree of a foreign Court dissolving a marriage contracted and solemnised in England, when supposing application for a divorce had been made to the English Court, that Court would have refused the application. For these reasons we submit that the divorce granted by the Scotch Court was void, at all events in England, and that the former marriage still subsisting, the petitioner is entitled to the relief sought.

Dr. Deane and Winch, for the respondent.—The cases which have been cited resolve themselves into two classes—one extensive, beginning with *Lolley's Case* (2), and the other small, beginning with *Warrender v. Warrender* (5). The former class is one in which parties *bona fide* domiciled in England and married in England, go to Scotland for the express purpose of committing a fraud upon or

evading the law of England, for the purpose of getting a benefit from a collusive domicile as distinguished from a *bona fide* domicile.

Lolley's Case (2) is not really applicable to the present case, as pointed out by Lord Brougham in *Warrender v. Warrender* (5) (p. 541). The parties were not only married but really domiciled in England, and had resorted to Scotland for the manifest purpose of obtaining a temporary and fictitious residence there, to give the Scotch Courts jurisdiction over them. It was nothing but a fictitious domicile. But this case is really disposed of by the cases of the other class.

It is true that *Warrender v. Warrender* (5) and *Geils v. Geils* (9) both came on appeal from Scotland, but the decisions are good upon general principles; and if we find that the *lex loci* is but an incident, and all the rights, duties and obligations flowing from the contract are to be governed by the law of the *bona fide* domicile, then those cases which were decided on general principles become at once applicable to the present case.

The domicile here of the husband was clearly Scotch, which frees this case from a difficulty which might have been felt more in the two other cases; and Lord Brougham in *Warrender v. Warrender* (5) says, "In every view of the question that can be taken we are bound to regard Lady Warrender's domicile as identical with her husband's, and thus the case becomes divested of all special circumstances, and is that of a marriage had in England between a domiciled Scotchman and an Englishwoman, sought to be dissolved by reason of the wife's adultery, through a suit in the Courts in Scotland, the residence or domicile of the husband being *bona fide* Scotch" (p. 528). And he further says, that their determination upon the question of domicile makes the *forum originis* of the wife quite immaterial. These remarks displace a great deal of the arguments on the other side as to the fact of the lady being originally an Englishwoman.

It is quite true that the *lex loci contractus* is the law which decides on the validity or invalidity of personal con-

(16) Rodenburg. De jure quod oritur e statutorum diversitate. Appended to Boullenois, *Traité de la Personnalité*, vol. 2.

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tracts, and which governs the question of *status*—that is, if persons, foreigners and English, marry here, they must, to make the marriage binding, marry in one of the forms required by our law for that purpose.

But questions of enforcing a contract, or granting redress to one party for a breach of its obligations by the other, are to be decided by the law of the country which the parties had in view with reference to its fulfilment—see *Ilderton v. Ilderton* (17), *Huber. de Conf.* (15), *Bland v. Robinson* (18), *Don v. Lippman* (19).

Now the judgment in *Warrender v. Warrender* (5) is to this effect—that by a marriage with a *bona fide* domiciled Scotchman, the woman becomes a Scotch wife, and therefore subject to Scotch law.

It is clear from the case of *Munro v. Munro* (13), that the question of domicile is the real point to be considered, and all the difficult questions, if referred to domicile, can be easily solved (20). That distinguishes this case from *Ross v. Ross* (21), where the parties were domiciled in England. That was the *ratio decidendi*. The domicile was English, therefore the Scotch law did not apply. In *Munro v. Munro* (13) the domicile was Scotch, and consequently the Scotch law prevailed, and that was the reason why *Tovey v. Lindsay* (3) was remitted, Lord Eldon being of opinion that the domicile of the husband was English.

Lord Cottenham in *Munro v. Munro* (13) (at p. 875) says that in *Warrender v. Warrender* (5) it was correctly assumed that for civil purposes in Scotland a marriage in England of a domiciled Scotchman was to be considered a Scotch marriage. It is now held that divorce is a civil proceeding. So in *Shaw v. Gould* (4) (at p. 76), Lord Chelmsford distinguishes both *Lolley's Case* (2) and *Warrender v. Warrender* (5), the latter of which cases he said was a direct authority in support of the exercise of such a jurisdiction (as in the present

case) by the Scotch Court; and the ground of that decision was the Scotch domicile of the husband, not at the time of the marriage, but at the time of the action against his wife, "which attracted her domicile and brought her constructively within the jurisdiction;" and the wife having once acquired the Scotch domicile of her husband, she became to all intents and purposes subject to and entitled to the benefit of the laws and institutions of Scotland. The cases of *Shaw v. The Attorney-General* (7), *Dolphin v. Robins* (6), *Pitt v. Pitt* (11), were all cases of "fictitious domicile." *Birtwhistle v. Vardill* (22) has no bearing on this: it was a case turning on the statute of Merton, and deciding that a child legitimised by the subsequent marriage of his parents could not succeed as heir to real estate in England; and Dr. Lushington in *Conway v. Beasley* (12) took the same view of *Lolley's Case* (2), that he resorted to Scotland for the express purpose of obtaining a divorce.

Maghee v. M'Allister (10) is on all fours with this case and conclusive; and the observations of Brett, L.J., in *Niboyet v. Niboyet* (14) are in our favour.

The cases of *Mettes v. Mettes* (23), *Manning v. Manning* (24), *Shedden v. Patrick* (25), *Mordavint v. Moncrieffe* (26), *Yelverton v. Yelverton* (27) were referred to and commented on.

Mr. Fooks, in reply.—The cases of *Sottomayer v. De Barros* (28) and *Simonin v. Mallac* (29), in which the English Court dissolved marriages contracted here between domiciled foreigners, shew that it is not the law of the domicile but the law of the place of contract that is to be taken into consideration.

(22) 7 Cl. & F. 895.

(23) 1 Sw. & Tr. 416; 28 Law J. Rep. Prob. & M. 117.

(24) 40 Law J. Rep. Prob. & M. 18; Law Rep. 2 P. & D. 223.

(25) 2 Sw. & Tr. 170.

(26) 43 Law J. Rep. Prob. & M. 49; Law Rep. 2 Sc. & Div. App. 374.

(27) 1 Sw. & Tr. 574.

(28) 49 Law J. Rep. P., D. & A. 1; Law Rep. 3 P. D. 1.

(29) 2 Sw. & Tr. 67; 29 Law J. Rep. Prob. & M. 97.

(17) 2 H. Black. 145.

(18) 1 W. Black. 268.

(19) 5 Cl. & F. 1.

(20) Story. *Conf. of Laws*, c. 5, s. 110.

(21) 4 Wilson & Shaw, 289.

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If the law of the domicile of the husband is the governing law, what would be the result in the case where the country of the domicile recognises polygamy as lawful?

He also referred to *Collis v. Hector* (30), *In re Goodman's Trusts* (31), *Huber* (15) and *Story* (20). Divorce is part of the *jus publicum* of the country, and the *jus publicum* of this country does not yield to the *jus publicum* of another country in the case of a marriage solemnised here.

JAMES, L.J.—In this case I am myself unable to entertain any doubt whatever as to the correctness of the decision of the learned President of the Probate Division.

The question is, whether a decree by a Scotch Court, between Scotch parties, has the effect of dissolving a marriage which has been contracted between these parties.

It is said that the decree has no operation and ought not to be recognised in England because the marriage was solemnised in England, and because in *Lolley's Case* (2) it was held, according to one report, that an English marriage could not be dissolved by a Scotch Court, or any foreign Court, except for reasons for which it would have been capable of being dissolved in England; and, according to another report, that the words "English marriage" have been construed by somebody, nobody knows when or how, into a "marriage solemnised in England." Now we know very little of *Lolley's Case* (2) except the facts which the reporter stated in *Russell & Ryan* and the decision. Of course every judgment in any Court must be construed with reference to the facts that were before the Court for determination. At the time when the judgment in *Lolley's Case* (2) was given by the learned Judges, who were consulted rather than sitting as a

tribunal of appeal, whatever may have been the habit of Judges in the time of Lord Coke of laying down abstract general propositions going far beyond the necessities of the particular case or cases before them—whatever may have been the habit of former Judges in that respect—it certainly was not in the year when *Lolley's Case* (2) was decided, any more than it is the habit of Judges now, to express general propositions or articles of a code beyond what was required by the particular circumstances of the case.

The particular circumstances of that case were a marriage between English persons; that is to say, a marriage in England between persons domiciled in England, and an appeal to a Scotch Court by one of those persons as against the other during a temporary residence in Scotland, it being beyond all question that they were neither of them domiciled in Scotland at the time. And it was held in that case that the decision of a Scotch Court affecting the *status* of English domiciled persons, domiciled in England at the time the *status* was originally constituted, and domiciled in England at the time when the *status* was sought to be removed, was invalid; that, according to English notions of law, the Scotch Court ought not to entertain a suit affecting the *status* of English people. That clearly was the whole of the decision. That decision has to that extent been admitted to have been good law. I do not think it has ever been questioned, and I do not feel myself disposed to say that that case is capable of being questioned. But the application of that case to the circumstances of the present has certainly been very much questioned, and questioned by the very highest authorities. It is impossible to read the judgment of Dr. Lushington in the case of *Conway v. Beazley* (12) without seeing that he did not consider that that case established any such universal rule, that he did not consider it was binding upon him or upon any Court in this country beyond the actual facts of that case; that is to say, that it was to be confined to a case where there was a "fictitious" domicile, as Dr. Deane called it, or a domicile where there

(30) 44 Law J. Rep. Chanc. 267; Law Rep. 19 Eq. 334.

(31) 49 Law J. Rep. Chanc. 805; Law Rep. 14 Ch. D. 619. The judgment was reversed on appeal, April 13, 1881 (Law Journal Notes of Cases, vol. 16, p. 58).

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was no domicile really attached to it, where there was merely a temporary residence in the country, the Courts of which were appealed to.

But, more than that, we have the expressions of many learned Lords, evidently expressing exactly the same view of that case, that it was to be considered as applying only to the circumstances of that case. And then we have the express authority of the Lord Chancellor of Ireland (Lord Blackburne) in a case exactly applicable to the facts before the Court, the very point being raised, with the sole distinction that you must substitute England for Ireland and substitute the Irish Court for the English Court as the place in which the question came to be decided.

Well, then, under those circumstances there is no authority, although at first I was pressed with this, that there was an English authority following *Lolley's Case* (2) in the case of *McCarthy v. De Oais* (1). That is the case before Lord Brougham; and the question arises for consideration to what extent one is bound by the decision of the Lord Chancellor, sitting in a Court of equity upon a question of law in the Probate and Divorce Court, whether that would be a binding authority; but upon a careful investigation of the facts of that case, however the point arose in Lord Brougham's mind and found its way into his judgment, that case really was not and could not have been any authority upon the question before us, because the point was neither raised in the pleadings nor was it sustained by evidence capable of being made the subject of available argument for that purpose. He seems to have taken it himself and evolved the whole thing from some passages in a letter as to the man being a naturalised Dane. But, independently of that, as to the fact upon which so much reliance was placed, namely, that he applied *Lolley's Case* (2) to the case of a marriage by a domiciled Dane in England, who was also a domiciled Dane at the time of the proceedings for divorce in Denmark, the facts which raised that litigation never had appeared in any way in which the Courts could take judicial notice of them. The only ques-

tion in that case was, whether the husband who had taken out administration to his wife as surviving husband, who had an apparent interest in a gift as surviving husband, had by certain letters which are set out in the proceedings under the circumstances of the case conclusively bound himself to the gift of that which was supposed to be his own, and his right to which as surviving husband was not really in question. There was this further to be observed, that if the facts were as they seem to have been assumed in the note to the case furnished by Lord Brougham, namely, that there had been a marriage in England by a domiciled Dane with an English lady, and that there had been a dissolution of that marriage in Denmark, the plaintiff, the husband, being still a domiciled Dane, and that that dissolution was not recognised by the English law as being of any validity, the result would have been, not that the property would have been distributed according to the English law, but that it would have been dealt with according to the Danish law; and the Danish law of course in the distribution of the assets of a Danish wife would have recognised its own divorce, and would not have been bound by any decision of this Court in *Lolley's Case* (2). Therefore, really, the point could not have been properly before the Court or determined by the Court, and therefore fully warranted what was said of it in the case of *Geils v. Geils* (9), as something which fell from the learned Judge *per incuriam*. The whole thing probably emanated from the application of *Lolley's Case* (2) to the case before him.

That disposes of the only authority that in any way conflicts with the decision of the learned President. And upon principle I cannot bring myself to doubt that what the President has said is right,—that if a domiciled foreigner comes into this country for the purpose of taking a wife from this country, the moment the marriage is contracted, the moment the *vinculum* exists, then the lady becomes to all intents and purposes of the same domicile as the husband, and all the rights and consequences arising from the mar-

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riage are to be determined by the law of that which, by the actual contract of marriage, becomes the domicile of both parties, exactly to the same extent as if they had both been originally of a foreign country. It seems to me that there is no qualification of that rule. A wife's home is her husband's home; a wife's country is her husband's country; a wife's domicile is her husband's domicile; and any question arising with reference to the *status* of those persons is, according to my view, to be determined according to the law of the domicile of the persons, assuming always that the domicile is a *bona fide* one, and not a domicile either fictitious or resorted to for the sole purpose of altering the *status*. I am not, however, prepared to say that an English husband could, by going to a foreign country for the sole purpose of domiciling himself in a place where a marriage could be dissolved at pleasure, be enabled to obtain a valid and binding dissolution of his marriage. That point it is not necessary for us to decide. But where the domicile is the real *bona fide* domicile of the husband and, consequently, of the wife, the Court—the forum of the country of that domicile—is the forum which has to administer the *status*, and has to determine whether the *status* was originally well created, and whether any circumstances have occurred which justify that forum in determining that the *status* has come to an end. I do not think it necessary myself to go further into the cases which have been cited, but I conceive the principle which is laid down by the learned President to be a sound principle not capable of being questioned; and that being so, there being in this case originally a marriage where the marriage home was intended to be Scotch, the marriage became in that sense a Scotch marriage—that is to say, the union became a Scotch union from the moment of the marriage; and there being, further, the fact that the parties were domiciled in Scotland at the time the sentence of dissolution was pronounced, I think that that sentence of dissolution ought to be recognised in this country and by all other countries in the world.

COTTON, L.J.—I am of the same opinion. I think a great deal of the difficulty in this case has arisen from the ambiguous use of the word “marriage.” We have been told it was an English marriage, and that therefore, according to *Lolley's Case* (2), and to what was said by the Judges in that case, it is indissoluble.

Now, to my mind, the fallacy lies in this: the word “marriage” is used in two senses. It may mean the solemnity by which two persons are joined together in wedlock, or it may mean their *status* when they have been so joined. The two things are entirely different. The solemnity by which they are united in marriage must depend upon the law of the country where that solemnity takes place—that is to say, the mode in which the marriage is solemnised and the forms to be followed. But when the marriage takes place in a country which is not the country of the domicile, the country of the domicile will treat the persons as married if they have followed the forms and ceremonies required by the country in which it is solemnised. Of course I am speaking only of Christian countries, and that gets rid of what was put to us by Mr. Fooks, that we have here to consider what would be the consequences of dealing with the law of the domicile supposing it were Turkish. The rule, I apprehend, prevails universally, that where a marriage has been solemnised according to the forms and in the manner required by the place where it is celebrated, that will be recognised in the country of the domicile. But that being recognised in the country of the domicile the persons become married—they become spouses. That is a question of *status*, and I take and adopt entirely what was said by Lord Westbury in the case of *Shaw v. Gould* (4): “But this right to reject a foreign sentence of divorce cannot rest on the principle stated by the Vice-Chancellor in his judgment, namely, that where by the *lex loci contractus* the marriage is indissoluble it cannot be dissolved by the sentence of any tribunal. Such a principle is at variance with the best-established rules of universal jurisprudence—that is

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to say, with those rules which, for the sake of general convenience and by tacit consent, are received by Christian nations and observed in their tribunals. One of these rules certainly is that questions of personal *status* depend on the law of the actual domicile."

Now what was the actual domicile here? The husband was, at the time of the solemnisation of the marriage in England, Scotch, and always so remained down to the time of the divorce; so that the domicile of the wife also after she had become united in marriage to her husband became, in my opinion, Scotch; and throughout the case of *Warrender v. Warrender* (5) not a doubt was expressed as to the law which decided that case, that when a woman domiciled in one country marries in that country a man domiciled in another country, her domicile at once becomes that of her husband's. That, I think, cannot be disputed or doubted. I know of no case which throws a doubt upon it. Of course that is entirely different from the question whether a husband and wife can be said to be domiciled in a country other than that of their former domicile and in which the *status* is differently regarded, and where greater facilities are granted for divorce, to which the husband has dragged his wife so as to make her subject to the tribunals of that country, and to the consequences of her being brought within that jurisdiction. That is an entirely different question. But here, when the lady married a Scotchman, she consented and agreed that her domicile from that time forth should be that of her husband's. That, I take it, is well recognised.

Well, then, we come to consider this question: Is this divorce an incident of the contract, and in any way to be governed by the law of the country where the solemnity took place, or is it a question of *status*? In my opinion, it is not a question in any way depending upon the rule that the *lex loci contractus* governs it. That applies, as I have already stated, to the forms and solemnities by which the marriage is celebrated. Here what we have is this: it is not contracted for

when the parties unite themselves in marriage that, according to the laws of the country where that marriage takes place, they shall have the power or not to dissolve the marriage. But it is really this: the country where the parties are, if that power is given by Act of Parliament which the Courts are bound to recognise as in *Niboyet v. Niboyet* (14), or, as a general rule, the tribunal of the domicile of the parties, deals with the *status*. Any act done in the violation of the duties incident to that *status* is a matter which concerns the country of the domicile, and, in my opinion, the question of divorce is not in any way an incident of the solemnity of the contract so as to be governed by the law of the country where that takes place, but an incident of the *status* to be disposed of by the law of the domicile of the parties if they are subject to the tribunals of that country. Well, that being so, here we have a real domicile throughout in Scotland, and, in my opinion, the Courts of that country, not only for the purpose of *status* in that country, but for the purpose of *status* everywhere, have the power to entertain this question, and, if they think fit, to decree a divorce.

Now is there any authority contrary to that? It is said that *Lolley's Case* (2) is against it. Now we have not any report which purports to give the exact words of it, but no doubt we have an "English marriage" spoken of, and that is translated in one report as a "marriage in England." But we must remember that in that case—and we must regard what was said by the Judges in reference to the case—the marriage was in both senses an English one, because it was solemnised in England and the parties to the marriage were English people—their *status* was English and the marriage was solemnised in England; and we must, in my opinion, notwithstanding the expressions which were used, and the ambiguity of the expression "English marriage," look at the facts of the case for the purpose of seeing what was intended to be there decided by the Judges. And, in my opinion, that decision does not at all stand in our way in deciding this case, nor ought we to be

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deterred from giving a judgment in accordance with our opinions by anything that was said in *Lolley's Case* (2). Now, on the case of *McCarthy v. De Caix* (1) I will add nothing to what was said by Lord Justice James. I quite agree with what he has said, but it is remarkable that in the case of *Shaw v. Gould* (4) Lord Westbury (at p. 85 of the report) says, "The position that a tribunal of a foreign country having jurisdiction to dissolve the marriage of its own subjects, is competent to pronounce a similar decree between English subjects who were married in England, but who before and at the time of the suit are permanently domiciled within the jurisdiction of such foreign tribunal, such decree being made in a *bona fide* suit without collusion or concert, is a position consistent with all the English decisions, although it may not be consistent with the resolution commonly cited as the resolution of the Judges in *Lolley's Case*" (2). He mentions *McCarthy v. De Caix* (1), but he does not consider that that was a decision which prevented him from laying down that as a principle independent of *Lolley's Case* (2). Therefore I think that that strengthens what has been already said by Lord Justice James as to that case in reference to the present case.

Now one ought to notice what has been said as to *Niboyet's Case* (14). It may be said that our decision there was in some way at variance with what we are laying down in this case. What was said by Lord Justice Brett was in favour of the respondent to this appeal, and he was in a minority; but the decision of the other members of the Court turned entirely upon the construction of an English Act of Parliament, and they said, whatever might have been the consequences independently of those words, this Act of Parliament gives to us—an English Court—jurisdiction in the matter, and says what is to be the consequence if certain facts are proved in a suit and brought before us under the Act. That was the *ratio decidendi* in that case. As to *Warrender v. Warrender* (5), I may say I cannot look upon it as decisive of

the present question, because, although there are principles laid down consistent with, and leading to, our decision, yet, in my opinion, the House of Lords there carefully guarded themselves by saying that they were deciding the matter as a Scotch Court of Appeal, and not dealing with it as an English Court, or saying what its effect might have been in England.

If we could have relied upon that case as decisive, of course there would have been an end of the matter, and therefore, without going into any reasons for that decision, in my opinion we cannot look upon *Warrender v. Warrender* (5) as in any way decisive of the case before us.

LUSH, L.J.—I am of the same opinion. It is obvious to me that the whole difficulty in this case arises from a mistaken use of a phrase in *Lolley's Case* (2), in which the marriage there in question is called an "English marriage." Now, the phrase "an English marriage" may refer to the place where the marriage was solemnised or it may refer to the nationality and domicile of the parties between whom it was solemnised; the place where the union so created was to have been enjoyed.

Now in *Lolley's Case* (2) it embraced both meanings. The parties there were English subjects, domiciled in England, married in England, and they went to Scotland for a temporary purpose, and while there the one party sued the other for a divorce and obtained it.

In this case the words must be taken in reference only to one of those meanings, namely, the place where the marriage was solemnised, because this was a marriage solemnised in England between a Scotchman domiciled in Scotland and an English lady whose domicile immediately the marriage was solemnised became his domicile. That being so it strikes me, I own, that the conclusion at which we have arrived is a logical sequence from the decision of the House of Lords in *Warrender v. Warrender* (5)—not the actual point decided there, because it was not before the Court, but it

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seems to me, having regard to general convenience and propriety, that it follows naturally from the decision in *Warrender v. Warrender* (5), because what the Court decided there was that in a case like this where a domiciled Scotchman was married in England to an English lady, but retained his domicile in Scotland, and the domicile of whose wife was therefore Scotch, he might sue for a divorce in the Court of Sessions in Scotland lawfully. They held, therefore, that a Scotch Court could dissolve in Scotland a marriage which had been created in England. Now to hold that the consequence of that is confined to Scotland, and to hold that a Scotchman who was released by the law of his own country from the marriage tie in the country where his home was, should, as soon as he came over the border into England, be liable to be indicted for bigamy is something that shocks all one's notions of morality and public convenience. No doubt that consequence follows in a case exactly like *Lolley's Case* (2) so long as that decision stands, but we are asked to extend it very considerably; and whatever we may think of *Lolley's Case* (2), I think we shall be agreed in this, that it is not one that ought to be extended. There are anomalies enough already arising out of the marriage laws, and we ought to be very careful not to create another, and in this case we should be creating another of a very serious kind if we were to hold that a man may be free in Scotland by the law of his own country, of his own home, to marry a woman there, and yet be liable to be indicted for that very act as a bigamous act if he came over the border into this country. That is what we are asked to do. I confess there is something about that which shocks all one's notions of what is right and just and convenient; and if there were no authority at all, I should have no hesitation myself in saying that *Warrender v. Warrender* (5) virtually decides it, because I hold it to be a logical and natural inference from the decision in that case that the union which was created in England could be dissolved by the Scotch Court, and being dissolved can no longer exist anywhere, and that wherever the parties

may happen to be the *status* is permanently altered.

Now, as Mr. Fooks has referred to what is called "marriage" in a country where polygamy is the law, I must take the opportunity also of saying, in accordance with what has fallen from Lord Justice Cotton, that there is no analogy whatever between the union of a man and a woman in a country where polygamy is allowed and the union of a man and a woman in a Christian country. Marriage in the contemplation of every Christian community is the union of one man and one woman to the exclusion of all others.

No such provision is made, no such relation is created, in a country where polygamy is allowed; and if one of the numerous wives of any Mohammedan were to come to this country and marry in this country, she could not be indicted for bigamy, because our laws do not recognise a marriage solemnised in that country—a union falsely called marriage—as a marriage to be recognised in our Christian country.

As I said before, if there were no decision at all, and no authority on the subject, speaking for myself I should conclude, irrespective of *Warrender v. Warrender* (5), that our decision should be in accordance with the decision arrived at in that case. But then we have authority. We have two, but unfortunately we have one on each side, because Lord Brougham's decision in *McCarthy v. De Caix* (1) decides that "in such a case as this the effect of it is confined to the country." Now, observations have been already made upon that case, and I need not repeat them to shew that it is really not an authority at all. The point which the learned Lord undertook to decide did not arise in the case. What he said upon it was only an *obiter dictum*, and contrary, I think, to all analogy and all principles. We have another case, decided some years afterwards by the Lord Chancellor of Ireland (Lord Blackburne), in which the facts were exactly similar, and notwithstanding the case before Lord Brougham that learned Judge took an entirely different view, and that is an authority which commends itself to my judgment, and one

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which I am very glad to be able to follow.

Therefore, viewing it on every side, however it may be, whether upon principle or whether upon reliable authority, I come without hesitation to the conclusion that the judgment of the learned President was entirely right, and that this appeal ought to be dismissed.

Solicitors—S. A. Tucker, for appellant; J. S. Ward, for respondent.

ADMIRALTY. }
1881. }
Feb. 16. }

THE LONGFORD.

Salvage—Bullion—Rate of Contribution to Salvage—Practice—Separate Appearance—Costs.

Each part of salvaged property must contribute towards the salvage awarded according to its value, and there is no difference in this respect between bullion and any other kind of property.

The Emma (2 W. Robin. 315; 3 Notes of Cas. 172) overruled.

Where a party obtains leave to appear separately at the trial he does so subject to his costs being disallowed.

This was an action for salvage against the *Longford*, her cargo and freight, brought by the owners of several Liverpool tugs.

Butt and Kennedy appeared for the *Mersey King*, the *Knight of Malta* and the *Rover*.

Clarkson, for the *Royal Alfred*.

Deane and Bruce, for the *Longford* and her cargo.

Cohen and Pollard, for the Bank of Ireland, the owners of 50,000*l.* of bullion laden on the *Longford*.

The point decided sufficiently appears from the following judgment:—

SIR ROBERT PHILLIMORE.—This is a case of salvage service rendered in August last in the river Mersey to the steamship *Longford* of 1,000 tons gross and 476 net register tonnage. The *Longford* was on a voyage from Dublin to Liverpool laden with a general cargo, passengers and live stock. It appears that at the time at which the salvage service in the case was rendered, the *Longford* had by careless and bad navigation impaled herself on the stem of the screw-steamship *Baltic*. In consequence of so doing the *Longford* received a wound of a very serious character in her side, and was most seriously injured. Perhaps the best course for the Court to adopt in this part of its judgment would be to refer to the log of the *Longford*, which contains this entry: "On the 16th of August sailed with passengers, cargo and cattle, wind east, fresh breeze; passed the Collingwood Dock at 7.20 A.M. on the 17th; proceeded to landing-stage, weather hazy, and while swinging to the tide, passing between two large steamers, our ship did not come round as quickly as I expected, when we fouled the White Star steamer *Baltic* at anchor in mid-river, her stem damaging our plates on the starboard side; ship commenced to fill with water; kept the engines at full speed to reach the dock wall. The tug *Mersey King* took our rope and towed us to the wall of the Prince's Dock, steamer *Rover* taking passengers and luggage, *Mersey King*, *Rover* and *Royal Alfred* taking cattle. About this time passengers commenced to jump on board the tugs." There is no doubt, therefore, that this vessel, the *Longford*, was in the most imminent danger of sinking. She steamed across the river to the Prince's landing-stage, and she was attended by four tugs, all of about the same size—the *Rover*, the *Mersey King*, the *Knight of Malta* and the *Royal Alfred*. When the *Longford* got over to the other side of the river at the north end of the landing-stage she was taken in tow by the *Mersey King*, which had stationed herself ahead, and was towed to the dock wall, where she was beached and sank. Now the merit of the service thus rendered consisted in its promptitude and not in the length of its

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duration. It is said that more tugs were employed than were needed, but it must be remembered that in these cases it may be more easy to say this after the danger is over than at the time of its occurrence, when any such calculation as to the degree of danger cannot be made with nicety. It appears to us that these tugs are entitled to take equal shares in whatever award the Court may make. There were 162 persons on board the salvaged vessel, 182 cattle, and specie to the amount of 50,000*l.*, and the value of the whole property proceeded against amounts to 72,000*l.* There was undoubtedly in this case a salvage service rendered both to life and to property. The defences set up on behalf of the *Longford* originally, were—first, that the tugs instead of assisting hampered the *Longford*; and the second, that the *Mersey King* improperly threw herself across the bows of the *Longford*. Both these charges are without proof, and it may be said that they are not proved. The Court, therefore, has to consider what is the proper amount of salvage remuneration to be awarded. Much discussion has taken place upon the question as to the extent to which certain bullion which was on board the *Longford* ought to contribute to the payment of salvage of property in this case. It appears that the specie, being in bags and otherwise protected from loss, was not exposed to the same peril of being entirely lost as it would have been if the circumstances had been different. Among the authorities cited as to the proportion in which bullion ought to contribute to the award, was a *dictum* of Dr. Lushington in the case of the *Emma* (1). In that case, a case of salvage, services had been rendered to a ship and her cargo, but as regards the ship the salvage had been settled out of Court, and the only property proceeded against was the cargo; and in the judgment of Dr. Lushington there is this passage: "Now in this class of case the ordinary usage of the Court, which is well known to every person who has practised in it, is to take the whole value of the ship and cargo, and assess the amount of remuneration upon the whole, each paying his due proportion. I am not aware, except in the instance of silver or bullion, that any distinction has ever been taken, or that parties have been admitted to aver that the services were of greater importance to the ship than they were to the cargo, and therefore that the ship should bear the lesser burden, or *vice versa*. Such a distinction, if acknowledged, would, in many cases, lead to intricate litigation and questions of great nicety, which it would be exceedingly difficult for the Court to adjust. With respect to silver and bullion, it is true that a distinction is wisely and properly admitted, and this upon the consideration that it is more easily rescued and preserved than more bulky articles of merchandise." The case of the *Emma* (1) is not, however, the only authority on the question, for during the argument the attention of the Court has been drawn to other cases material to the point, and especially to the case of *The Jonge Bastian* (2), decided by Lord Stowell in 1804, where salvage services had been rendered to a derelict vessel, a portion of the cargo of which had been composed of bullion, and the very same contention as in the present case was raised, but was not sustained by the Court. And from a consideration from these cases, it is clear to me that if, in the case of silver or bullion, any such exception as that referred to in the case of *The Emma* (1) existed in practice, some mention of it would have been made either of such exception or of any authorities tending to support it; but the case as reported contains nothing to lead to the conclusion that specie salvaged is not in the same position as any other salvaged cargo. It appears to me that the Court would be involved in great difficulty if it admitted any other principle in these cases than that every description of property salvaged must, whatever be its nature, contribute equally in proportion to its value towards payment of the amount of salvage remuneration awarded. It must be understood that I make my judgment in this case under that principle, and that the defendants must con-

tribution upon the whole, each paying his due proportion. I am not aware, except in the instance of silver or bullion, that any distinction has ever been taken, or that parties have been admitted to aver that the services were of greater importance to the ship than they were to the cargo, and therefore that the ship should bear the lesser burden, or *vice versa*. Such a distinction, if acknowledged, would, in many cases, lead to intricate litigation and questions of great nicety, which it would be exceedingly difficult for the Court to adjust. With respect to silver and bullion, it is true that a distinction is wisely and properly admitted, and this upon the consideration that it is more easily rescued and preserved than more bulky articles of merchandise." The case of the *Emma* (1) is not, however, the only authority on the question, for during the argument the attention of the Court has been drawn to other cases material to the point, and especially to the case of *The Jonge Bastian* (2), decided by Lord Stowell in 1804, where salvage services had been rendered to a derelict vessel, a portion of the cargo of which had been composed of bullion, and the very same contention as in the present case was raised, but was not sustained by the Court. And from a consideration from these cases, it is clear to me that if, in the case of silver or bullion, any such exception as that referred to in the case of *The Emma* (1) existed in practice, some mention of it would have been made either of such exception or of any authorities tending to support it; but the case as reported contains nothing to lead to the conclusion that specie salvaged is not in the same position as any other salvaged cargo. It appears to me that the Court would be involved in great difficulty if it admitted any other principle in these cases than that every description of property salvaged must, whatever be its nature, contribute equally in proportion to its value towards payment of the amount of salvage remuneration awarded. It must be understood that I make my judgment in this case under that principle, and that the defendants must con-

(1) 2 W. Robin. 315; 3 Notes of Cas. 172.

(2) 5 C. Robin. 324.

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tribute to the award I am about to make in proportion to the value of the salvaged property belonging to them respectively. I shall award 1,200*l.* as the entire amount of salvage remuneration to be equally divided among the four steam-tugs. In other words, the owners, master and crew of each steam-tug will be entitled to 400*l.*

The plaintiffs, other than the owners, master and crew of the *Royal Alfred*, will have their costs. With regard to the costs incurred by the owners, master and crew of the *Royal Alfred*, I think the justice of the case will be met by them being allowed such costs as they would have been allowed if they had not appeared separately by counsel, and had been entitled to costs. My attention has been drawn to the fact that the District Registrar at Liverpool gave leave to the owners, master and crew of the *Royal Alfred* to appear at the hearing by one counsel. I wish to be understood that in all cases where any order is made for a party to be at liberty to appear separately by counsel, it must be considered to be one of the terms of such order that the same is granted subject to the allowance or disallowance of costs at the hearing.

Solicitors—Pritchard & Sons, agents for Bateson & Co., Liverpool, for the owners, master and crew of the *Rover*, the *Mersey King* and the *Knight of Malta*; Gregory & Co., agents for Hill & Dickinson, Liverpool, for the owners, master and crew of the *Royal Alfred*; W. W. Wynne & Son, agents for Simpson & North, Liverpool, for defendants.

[IN THE COURT OF APPEAL.]

PROBATE. }
1880. } DAWKINS v. SIMONETTI.*
Dec. 15. }

Will by Testatrix (a domiciled English-woman) prior to Marriage with an Italian Subject domiciled in Italy—Contest as to Validity of Will between the Executor and Husband—Compromise—Probate of Will obtained in Common Form by Executor—Alleged later Will revoking first—Validity denied by Executor of earlier Will—Suits in England and Italy—Injunction.

A, an Englishwoman by birth, intermarried with B, a natural-born Italian subject, and domiciled in Italy. In 1865, she being then domiciled in England, and some years prior to her marriage, she made a will, and thereof appointed the plaintiff (her brother) executor. After her death, which happened in Italy in 1873, a contest arose between her executor and her husband (the defendant) as to the validity of the will. An agreement of compromise was come to between them, and in pursuance of it the plaintiff obtained probate of the will in common form. In 1878 the defendant produced an alleged holographic will of his deceased wife, which bore date December, 1872, and revoked the earlier will. Thereupon the plaintiff commenced a suit in this Court, claiming probate in solemn form of the will of 1865. The defendant appeared under protest, but filed a defence and counter-claim, setting up the alleged will of 1872; and he at the same time commenced a suit for a decree affirming its validity in the Civil and Correctional Tribunal of Naples. In these circumstances the Court refused to grant an injunction restraining the defendant from proceeding with the Italian suit.

Emma Augusta Juliana Simonetti, wife of Signor Paolo Guistino Simonetti (the defendant in this action), formerly Emma Augusta Juliana Dawkins, of Over Norton, in the county of Oxford, and afterwards of the Rectory Sigston, near Northallerton, in the county of York, but late of Naples, in Italy, deceased, who died on

* *Coram* Jessel, M.R.; Cotton, L.J.; and Lush, L.J.

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the 23rd of January, 1873, at Naples, aforesaid, made a will on the 30th of January, 1865, and thereof appointed the plaintiff, the Rev. James Annesley Dawkins and Clinton George Augustus Dawkins (since deceased), her brothers, executors thereof. In February, 1871, the deceased intermarried with Signor Paolo Guistino Simonetti, the defendant, a natural-born Italian subject, and at the time of such marriage domiciled in Italy, and from and after her marriage the deceased resided with her husband in Italy, and was domiciled in Italy at the time of her death. There was no issue of the marriage, and it appeared that, in those circumstances, by the law of Italy her will of January, 1865, continued a valid and subsisting instrument. After her death a contest arose between the plaintiff and defendant respecting the validity of the will of 1865, and proceedings were commenced in the Court of Naples, and in the Court of Probate in England, for the determination of their respective claims. An arrangement was, however, entered into for the compromise of those suits upon certain terms, one of which was that the defendant would consent to the plaintiff obtaining probate of the will. This agreement, dated the 2nd of June, 1875, was carried out, and in pursuance of it the plaintiff obtained probate of the will in common form. In October, 1878, the defendant alleged that he had found among the papers of his deceased wife a holographic will, dated the 20th of December, 1872, which revoked the will of 1865, and left all her property to him. Thereupon the plaintiff, in February, 1879, commenced the present action, claiming probate in solemn form of the will of 1865 as the last will of the testatrix. The defendant at first appeared under protest, but he afterwards delivered a statement of defence and counter-claim, in which he alleged that at the time of the compromise both he and the plaintiff were ignorant of the will of 1872, and he claimed probate in solemn form of that will. The plaintiff replied that the deceased did not in fact make in Italy or elsewhere the alleged will, dated the 20th of December, 1872, and, further, that if the said alleged

will was valid as a will, the defendant at the date of the agreement of compromise in June, 1875, was not ignorant of the execution and existence of the said alleged will. After the defendant had delivered his statement of defence and counter-claim he commenced a suit in the Civil and Correctional Tribunal of Naples to obtain a decree declaring the existence and validity of the said alleged will of December, 1872, and the plaintiff was cited to appear in the suit.

The whole of the remaining personal estate of the deceased was situate in England, and the only personal property that belonged to her in Italy passed to the defendant under the agreement of the 2nd of June, 1875.

Tristram, on behalf of the plaintiff, moved for an injunction restraining the defendant from proceeding with the Neapolitan suit. This Court had possession of the case, and it was entered in the list for trial at these sittings—*Kerr on Injunctions*, 516.

Pritchard, for the defendant, opposed the application.—The deceased was domiciled in Italy, the will was made according to Italian law and the Italian Court was the proper tribunal to determine as to its validity.

THE PRESIDENT (SIR JAMES HANNEN).—It is for the Italian Court to constitute a representation to this lady, and I should follow its decision. It was the plaintiff who instituted proceedings here, and the defendant appeared under protest. That has an important bearing on the question, whether I should, in the exercise of my discretion, restrain him from proceeding with the suit in Italy. The law of the domicile must prevail, and if the Italian Court, Italy having been her domicile, constitute a representation to this lady, I am bound to follow its decree. It may very well be that Mr. Dawkins, being an Englishman, would prefer to have the decision of an English Court on a question of forgery, and the defendant might prefer to have the decision of a Court in Italy on that issue. It appears that he

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has taken proceedings in the ordinary course to have the will established in Italy, and that being so, I do not think that Mr. Dawkins is entitled to come to this Court and say, "Because I have taken proceedings here, I require that the proceedings taken in the Court of the domicile shall be stayed." I must refuse the application with costs.

The plaintiff appealed.

Tristram, for the appellant.

Pritchard, for the respondent.

JESSEL, M.R., said—It is plain that even if the defendant, when he entered into the agreement of compromise, knew of the will of 1872, no terms of compromise can compel the Probate Division to grant probate of a revoked will. Therefore, the question of probate remains to be decided somewhere. The defendant, after the reply in the plaintiff's action, commenced his action in the foreign Court for the purpose (so to speak) of obtaining probate in solemn form of the will of 1872. The plaintiff then applied to the Court of Probate for an injunction to restrain the defendant from proceeding in the foreign Court. The first question is, whether there is any jurisdiction at all to do this. I am far from saying that, when a man had appeared in an English suit, he does not give the Court jurisdiction to grant any proper application against him. I do not think it impossible that there might be cases in which it would be proper to grant an injunction. Under what circumstances, then, ought an injunction of this nature to be granted? The ground would be "double vexation." This was a familiar thing in the old Court of Chancery, when a plaintiff had commenced proceedings both at law and in equity. In such a case a plaintiff was put to his election; and the same thing happened if a plaintiff was proceeding both in an English Court and a foreign Court. The practice was to move to stay the proceedings in the one Court or the other. As a general rule the Court prevented a "double vexation," but it always exercised a discretion; and when it saw that there was a ground for continuing

the suit, independently of the "double vexation," the Court would only restrain the vexatious part of it. Lord Justice Cotton has called my attention to the case of *Wedderburn v. Wedderburn* (1), where Lord Cottenham allowed proceedings to go on in Scotland, so that certain real estate in that country was put out of the reach of the plaintiffs in an English suit; he held it to be a matter of discretion. It comes to this, that there was a discretion as to granting such an application, even assuming that we have jurisdiction. How, then, ought the discretion to be exercised in the present case? The only effect of the judgment of the Neapolitan Court, if fairly obtained, will be that it will be followed by the English Court by reason of the comity of nations. The English Courts give credit to foreign tribunals for knowing their own law, and deciding properly on it. This of itself shows that there is no necessary objection to allowing the foreign proceedings to go on. In the present case the defendant preferred his own Court; the lady whose will was in question died domiciled in Naples; the question to be decided was one of fact as to the execution of the will, and the witnesses resided in or about Naples, and the defendant was a domiciled Italian. Why should this Court prevent him from having the case tried in Italy? The only reason suggested is that the property of the deceased wife is in England. But that will not prevent the Italian Court from deciding the question, and, as a mere matter of convenience, it appears to me it will be better that it should be tried in Naples.

COTTON, L.J., and LUSH, L.J., concurred.

Solicitors—W. W. Palmer, for plaintiff; A. Leslie, for defendant.

ADMIRALTY. }
 1881. } THE MARINA.
 Jan. 26, 27, 28. }

Wages — Insubordination — Power of Owners to Dismiss Officers.

The owners of a vessel have a right to dismiss an officer who directly or indirectly promotes insubordination, and such officer has no right to wages otherwise due to him by agreement after such dismissal.

This was an action by the first and second engineers of the steamship *Marina* against her owners for a sum in respect of wages, which they alleged was due to them; but the allegation was denied by the owners on the ground that the plaintiffs had been rightly dismissed before such wages were earned. The facts are set out very fully in the judgment of the Court.

Phillimore appeared for the plaintiff; *Butt* and *French*, for the defendants.

SIR R. PHILLIMORE.—This case is remarkable for being the first in which this Court has been assisted by engineer assessors, and I am desirous at the outset of these observations to express my thanks for the service which they have rendered me. There are two plaintiffs before the Court, whose claims are practically one and the same. The first plaintiff, Robert Henry Harboard, is a marine chief engineer; the second plaintiff, Charles Frederick Creegen, is a marine second engineer. The defendants in both cases are the owners of the screw-steamship *Marina*. On the 26th of May, 1880, the defendants pleaded various defences, which, in the course of the arguments before the Court, were reduced to two: One, that the plaintiffs were unwilling and refused to sail on another voyage after their arrival at Castellamare; and, secondly, that they misconducted themselves. The plaintiffs replied that they did not refuse to sail, and that if they did they were justified by the fact that the *Marina* was not in a seaworthy condition. This reply necessitates an enquiry into the state of the engines at Liverpool, at Baltimore, and

more especially at Castellamare, and it is with regard to this enquiry that I have found the assistance of my assessors very valuable. The claims are not for a forfeiture of wages, for in both cases it is admitted that the wages up to the time of the dismissal of the plaintiffs were paid to them, and their passage home duly provided for. Their claims are for the wages which they would have earned according to agreements with the defendants if they had not been dismissed from the service of the defendants improperly, as they allege.

Our first information in this case of the *Marina* is that on February 26, 1880, she was at Liverpool, and her engines and machinery were being overhauled and repaired previously to her setting out on a voyage to Baltimore. The two plaintiffs were engaged respectively as first and second engineer, the former at the wages of 15*l.* and the latter at 10*l.* per month. They were engaged to serve on board the *Marina* for a voyage from Liverpool to Baltimore, and any port or places in the United States, British North America, Atlantic, Pacific and Indian Oceans, China, Eastern Arabian, Red, Mediterranean, Black, Baltic and Caribbean Seas and back, to a final port of discharge in the United Kingdom or Continent of Europe, the term of service not to exceed twelve months. The engagement dated from the 4th of March, 1880, but it is important to observe that on the 26th of February Harboard was sent on board to assist at the repairs then being executed by Messrs. Jack & Co., at Liverpool, in whose employ he was. It was understood that he was to continue on board the vessel, and go out in her as chief engineer. In his evidence Harboard says that he joined the *Marina* on the 4th of March, 1880, and this is, perhaps, literally correct, as he probably signed articles on that day, and was not borne on the ship's books previously. He says that on the 4th of March all was closed up and ready for sea; but, it must be remembered that he had been on board constantly in the engine-room six days prior to this date, and must be presumed to have acquired a sufficient knowledge of the machinery about to be

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entrusted to him. More especially as Donaldson—the late chief engineer—was with him up to the time the *Marina* sailed, and as Creegen—the second engineer—had already made two voyages in her. Nevertheless, Harboard, writing at Liverpool to some corporation a letter dated the 15th of June, 1880, some time after his dismissal, stated, amongst other things, as follows:—

“To further convince you of the fallacy of the report of survey you have received, when the ship arrived in Liverpool last February it was then desired by those on board that she should be put in dry dock for certain purposes. The request was not acceded to, and she went another long Atlantic voyage in the same state, and three months' more excessive straining and wear has not improved these very palpable and apparent defects, which defects in a great measure were known to the officials of the company in Liverpool before I joined the ship, on Thursday, the 4th of March, at the last minute, when everything was closed up and handed over to me as being all right but a little tender, which I ascertained to be false. Before I was out of dock twelve hours I expected to see the machinery lying in the bottom of the ship long before we got to Baltimore.”

I find it impossible to believe this statement; it cannot be reconciled with the facts to which I have adverted. The voyage was of unusual length even for the season of the year, as the *Marina* did not arrive at Baltimore till the 4th of April. It appears from the engineer's log that she occasionally experienced heavy weather, and that the screw raced at times, and the governor was kept on for several days. According to the same log it became necessary to make four engine-rooms stops of different durations for tacking the high-pressure piston rod gland, the gland of bilge pump heating the crank shaft bearings, &c. The assessors, who have drawn my attention to this, observe that it is not an undue number, having regard to the age of the engines—ten years—and the length of the voyage. They observe that the engine log generally reports “All well”

at the end of each day, and they are of opinion that the engineer's log, taken as a whole, shows a fair, if not a good, state of the machinery. At Baltimore the engines were overhauled, not only by the ship's crew, but by six mechanics employed from the shore. During the stay at Baltimore a circumstance occurred which gave rise to a charge against Creegen, the second engineer. Whilst the engines were under repair he was employed to examine the high-pressure slide, the steam-chest door of which had a broken lug, which, when removed, became a loose piece, which he placed inside the steam chest with that cylinder, with the fastening bolts. It was placed there only temporarily, and by some unexplained accident was found during the subsequent illness of Creegen in the steam pipe. Harboard, listening too readily to a malicious story originating in the bad feeling existing between the third engineer and Creegen, came to the conclusion that Creegen had placed it in the steam pipe, and reported so to the captain, who very improperly, after the discharge of Creegen at Castellamare, entered the matter in his log, not as a report to be investigated, but a distinct charge. It is unnecessary to go farther into the matter, for the charge has not been pressed by the counsel for the defendants, and I agree with the assessors that it was one result of the very bad discipline maintained in the engine-room. On the 6th of May, 1880, Captain Ramsay wrote from Gibraltar to his owners at Liverpool: “I am glad to know that you intend to load the ship for home if possible, as my chief engineer informs me that the engines will need extensive repairs before long, notwithstanding the amount of work which he had done while at Baltimore.” Whilst the *Marina* was running between Gibraltar and Castellamare, about the 17th of May, the captain appears to have received instructions from his owners that the *Marina* was to take in a cargo of fruit at Naples and proceed with it to America. A report to this effect was circulated among the crew, and Harboard states that some of the firemen came to him with a list of complaints, not of the boilers, but of the

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engines more particularly, making only one complaint apart from the machinery department, viz. that loose rivets existed, and expressed their determination to stop the ship at the next port. Harboard told the captain of these complaints because, among other reasons, if the *Marina* took in a perishable cargo, and was stopped, more loss would be incurred by the owners. The captain, using coarse language, told him not to take any notice of the threat of the firemen. Harboard did not follow the captain's suggestion, but proceeded to put the complaints in writing, and they were signed by all the hands in the machinery department and sent to the captain.

I agree with the assessors that Harboard's evidence in the matter is not trustworthy, and that his conduct was very censurable in relation to this transaction. The firemen could have known little or nothing of the machinery connected with the engines, and it was for Harboard to judge whether the engines were safe and in good condition. On the 19th of May, after the arrival of the *Marina* at Castellamare, the captain swears that Harboard told him that he would not proceed in the ship any farther unless extensive repairs were effected; that the captain asked him to sign a list of the repairs, but that he refused to do so. The captain told him that he should telegraph to the owners, and immediately did so, in these words: "Chief engineer refuses to proceed unless ship docked for repairs." The evidence appears to us to confirm the captain's statement that Harboard refused to remain on board the vessel unless extensive repairs were effected. I am of opinion that he was lawfully dismissed on this ground, if there was no other. When the captain returned from Naples, having sent the telegram, a document, called a protest, was placed in his hands.

On the same day the captain sent a second telegram to the owners, as follows: "Received written statement signed, engineers, firemen, considering ship unfit to proceed Atlantic until docked and extensive repairs—engines—full." The owners telegraphed next day

as follows: "20th of May, 1880. Are sending Donaldson—late chief—and a second, probably McIntyre. When they arrive, send present chief and second home. This will, of course, remove all difficulties." Looking to all the circumstances, I am of opinion, agreeing with the assessors, that Harboard had initiated this protest and subsequently signed it with the other men, and that afterwards he made the addition as to the state of the crank shaft. I have said that Harboard was lawfully dismissed on the ground of his refusal to remain in the ship. I think that his defence for his refusal that the ship was not seaworthy was a false defence, and I think that he was also lawfully dismissed upon other and general grounds. The assessors are of opinion that all the defects referred to in the protest were frivolous and vexatious and not made in good faith, nor for the advantage and benefit of the owners. It has been said that Harboard is in some degree confirmed by the chief engineer on the steamship *Cid*, who reported the ship as unsafe in a naval enquiry holden at Naples upon the ship and machinery. Since that enquiry time has elapsed, and it has been proved that this same crank shaft is now at work on a voyage to the Cape, and that the owners did not think it necessary to provide a spare one for the voyage which the *Marina* is now making. It is to be observed that the same naval court found that all the other complaints enumerated in the protest had no foundations. Without going further into the history of this case, I agree with the assessors that at this period Harboard did not properly discharge his duties as chief engineer at sea in this ship, and that his discharge was, in the circumstances, just. He appeared to me and to the assessors to be a clever man, but better qualified to discharge the duties of a subordinate place than of a chief engineer. Different considerations apply to the case of Creegen. Upon an examination of the evidence I do not find that he was guilty of any fault but that of signing the protest, which I am of opinion was not sufficient to have warranted his dismissal; and the charge respecting the

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log has broken down and been abandoned. I think he is entitled to the wages which he would have earned if he had been on board the *Marina* when she arrived in England. It would be difficult and is unnecessary to specify with exactness the kind of misconduct which warrants the owners in the dismissal of an officer at sea. Each case must depend upon its own circumstances; but it certainly must be competent to an owner to dismiss an officer who promotes, directly or indirectly, insubordination on board the ship upon which he serves.

Solicitors—Speechly, Mumford & Co., agents for J. W. Carr & Co., Liverpool, for plaintiffs; Pritchard & Son, agents for Bateson & Co., Liverpool, for defendants.

[IN THE COURT OF APPEAL.]

ADMIRALTY.	}	THE ALHAMBRA.*
1881.		
March 22.		

Charter-party—"Safe port, or as near thereunto as she can safely get, and always lay and discharge afloat"—Evidence of Custom at Port of Discharge.

When it is agreed by a charter-party that a ship shall proceed to a "safe port, or as near thereunto as she can safely get, and always lay and discharge afloat," the master is not bound, if ordered to a port which can only be entered by first discharging part of the cargo, to allow such an amount to be taken out as will enable her to enter the port, even if the lighterage can be done in a place and under circumstances which will not expose the vessel to danger; and in such a case evidence that the custom of the port is to lighten vessels, when necessary, before entering the port is not admissible.

This was an appeal by the defendants from the decision of Sir R. Phillimore in favour of the plaintiffs, reported 49 Law J. Rep. P., D. & A. 73.

* *Coram* James, L.J.; Brett, L.J.; and Cotton, L.J.

The action was brought by the consignees of cargo against the shipowner to recover damages for breach of contract.

Butt and Clarkson, for the defendants.

Milward and Aspinall, for the plaintiffs.

The arguments were in substance the same as in the Court below.

JAMES, L.J.—I am of opinion that the question in this case depends really upon the construction of the words used in the charter-party. The consignees of the cargo had a right to order the ship to proceed to any safe port and deliver there, or as near thereto as the ship could safely get, and "always lay and discharge afloat." Upon the construction of the charter-party, independent of the evidence that the experts gave as to what is meant by a safe port, I am of opinion that the plain meaning of the expression a "safe" port is a port in which the condition of safety was to be got which is referred to afterwards; that is to say, a port into which she could "safely get, and always lay and discharge afloat." That is the place to which she had contracted to go. She had not contracted to go somewhere something like it, or with a little variation from it, as the party ordering her to go might require. The master says, "No, you must name me a port, and I will go to that port if I can get there; and if from any cause not my own fault I cannot get there, I will get as near thereto as I can safely get, still complying with the conditions given me at first—that is to say, to go to a port where I can safely get and lay and discharge afloat." Then the question is, whether Lowestoft is a port of that kind. Now it is conceded that Lowestoft is not a port in which a ship of the size and burthen of this ship could safely lay—(there is no peculiarity in the ship—she did not differ from any ordinary ship; she was, as far as we can see, an ordinary ship, of ordinary build and ordinary construction)—nor a port in which there is a sufficient draught of water for a ship drawing sixteen feet when she is loaded. It is also admitted that at low water there was ordinarily not more than eleven feet in the harbour.

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In my opinion, therefore, that is not a safe port. It appears to me that it is not made a safe port—a port in which the ship can lay with safety and discharge afloat—because there is something outside, some little distance from the port, a place in which the ship can lay afloat, and within which place she can discharge part of her cargo; and then when she has discharged a sufficient part of her cargo she can get into the port which is named. That may be all very well; it may be an unreasonable thing or a reasonable thing, but that is not the bargain the parties have entered into. They never entered into a contract to go somewhere to a port which was not safe, but a port which would be safe if they stopped at some other place near it and with a little manipulation of the cargo made the ship fit to go into that port. That was not the bargain. The bargain was a plain bargain, in plain English, that she should go to a port, provided the other party named a port, which in itself and by itself was a port safe for a ship of such a burthen, and complied generally with the other requisites mentioned in the charter-party. I am of opinion, under the circumstances, that Lowestoft was not such a port, and that therefore the defendants are entitled to the judgment of the Court.

BRETT, L.J.—The question here is, what was the sort of port to which, when the ship arrived at Falmouth for orders, the charterers or the person representing the charterers would have a right to order the ship to go? It seems to me that the first necessity was that they should order her to go to a port—to something which is known in seafaring language as a port; secondly, it should be a port in which she might always lay and discharge afloat; and, according to my view, the meaning of that is, that it should be a port in which, from the moment she went into it in the condition in which she was entitled to go into it—from that moment she should be able to lay afloat, and that she should be able to lay afloat until the time when she was fairly discharged. The condition in which she was entitled to go into this port would be “fully loaded,” and she was not bound to unload before she got to that

port. Therefore the meaning of it is that it must be a port in which when she was fully loaded she would be able to lay afloat; and it must be a port which would remain in such a condition that she would be able to lay afloat from that moment until she was discharged. But there is something more than that. It must not only be that, but it must be safe; therefore, if she was ordered to a port in which she could lay afloat from the beginning to the end, but in which she would not be safe laying afloat (there may be such ports), she was not bound to go to that port. The question is, whether Lowestoft was a port to which, taking that construction, these consignees of the cargo were entitled to order her to go. They ordered her to go to Lowestoft. The meaning of that, to my mind, considering what Lowestoft is shewn to be, is not to go to Lowestoft roads, but to go to Lowestoft harbour. Therefore the question must be, whether Lowestoft harbour was a place into which she could go fully loaded, and lay afloat from the moment she went into it so fully loaded until she was discharged. In my opinion it was not. But then it is said she could have done that, if she partially unloaded in Lowestoft roads, and the custom is vouched. It seems to me that that custom is inadmissible, because it is a custom sought to be applied to a contract, where the ship is only bound to go into Lowestoft, as to something to be done before she gets to Lowestoft. The evidence, to my mind, was inadmissible. Therefore it seems clear to me that Lowestoft was a port to which they were not authorised to order her.

The case of *Shield v. Wilkins* (1) seems to me to be an authority precisely in point as to the principles of this decision. I will say nothing about *Gibson v. Hillstrom* (2). I reserve my view of how far one is bound to follow that case until the point which was decided in it arises. It does not seem to be applicable to the present case.

COTTON, L.J.—I am of the same opinion. What we have to consider is this: whether the charterers had a right to order the

(1) 5 Exch. Rep. 804; 19 Law J. Rep. Exch. 238.

(2) 3 Asp. Mar. Cas. 302.

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captain of the vessel to proceed to Lowestoft. That depends upon the construction of the charter-party. The place to be named is a safe port within certain limits, and there is this also in the charter-party—although not immediately following—“where the ship can always lay and discharge afloat.” Now, in my opinion, simply taking the construction of this charter (for I think the evidence as to what is meant by a safe port could not be safely admissible—I do not say it could not possibly be—I do not rely on it at all), a safe port there means a safe port for the vessel loading—that is to say, one into which a vessel loaded can safely get. And in that construction one is supported very much by what was said by Lord Cranworth in his judgment in the case of *Shield v. Wilkins* (1), which is exactly in point, supporting the construction at which I have arrived. But there is something more here. We have in this charter-party a declaratory word “safe;” for though there may be a doubt whether these words, “and always lay and discharge afloat,” apply primarily to the place or to the port of discharge to which the ship can safely get, yet, in my opinion, it does shew in this charter-party what is meant by a safe port—that is, one into which the vessel in its loaded state can safely get, and in which it could “always lay and discharge afloat.” The only question we have to consider is this: whether, on the evidence, Lowestoft was such a place, or whether there was anything as regards the custom which, notwithstanding it was not, can justify the charterers in ordering the ship there. Whether Lowestoft was such a place must depend upon this—as to whether the roads were Lowestoft. Now the roads were not the port—the roads were not a part of the port of Lowestoft; and when the charterers ordered the ship to go to Lowestoft, the charter-party only authorising the ship to go to the port, they must have meant to the port or harbour of Lowestoft, and not to Lowestoft roads. Therefore, in my opinion, though the ship might have safely unloaded whilst laying afloat in the roads, that will not save the charterers, and enable them to say they had a right to require the ship to go to Lowestoft. Now it is said there is a cus-

tom of this port, and that that makes a difference. It is perfectly true that when a ship has to go to a port, and there are stipulations as to the time of unloading, the unloading must be according to the custom of the port to which she is bound to go; that is to say, if the custom is in this port that the ship is bound to go to unload part at a particular place, and then go up to the wharf and unload the remainder, that construes and controls, if there is nothing expressly in the contract to the contrary, the stipulations of the charter-party. But it is said here that when the construction of the contract is that the port mentioned is one into which the ship so loaded can safely go, and lay afloat and discharge, that is to be varied by this, that at this particular port ships never do go loaded into port, but stay outside the port and there take out part of their cargo before they go in. But in my opinion that custom, if it is proved, is in no way admissible to control what is the true construction of the charter-party, independently of any such custom proved. When the port is fixed, then the custom of the port may regulate certain things not expressly provided for in the charter-party. In my opinion, the custom of the port as to the way in which ships are dealt with before they go into the port cannot shew that the port is one that the charterers had a right under this charter-party to order the ship to go to, if, without any such custom, it would not have been such a port.

JAMES, L.J.—I did not say anything about the custom, but I will sum up in a few words my view of it. The custom alleged here is, that Lowestoft does not mean Lowestoft, but means something else.

Appeal accordingly allowed with costs.

Solicitors—Hughes, Hooker, Buttanshaw & Thunder, for appellants; H. C. Coote, for respondents.

PROBATE.
1880.
Nov. 30.

NORMAN v. STRAINS.

Probate Causes—Compromise.

In sanctioning arrangements between parties to Probate causes, the Court acts upon the statement of counsel that the compromise is expedient, but it does not by such sanction thereby intend to bind infants or any other persons.

The testatrix, Elizabeth Atkinson Strains, wife of Werter Strains, of Paul's Road, Bow, in the county of Middlesex, died on the 2nd of March, 1880. She had the power of disposing by will of certain real and personal estate, and this power she exercised by a will, which she duly executed on the 18th of December, 1879, and whereof she appointed the plaintiff sole executor.

A *caveat* was entered on behalf of the defendant, the husband of the testatrix, who was abroad at the time of her death. The *caveat* was duly warned, and there the matter rested, an agreement having been come to between the parties. The parties to the agreement were the defendant of the first part, the plaintiff of the second part, Edward James Denton of the third part, Maria Denton, the wife of the said Edward James Denton, of the fourth part, and the five children, all under age, of the said Edward James Denton by the said Maria Denton, of the fifth part. The agreement was dated the 3rd of November, 1880.

Tyssen, for the defendant, moved the Court on the 30th of November to approve of the agreement on behalf of the said Maria Denton, she being a married woman, and the said parties thereto of the fifth part, they being infants; to order the said agreement so approved of by the Court to be filed; and to decree probate of the will. The estate was small, not more than 600*l.*, and it was for the advantage of all parties that effect should be given to the compromise.

Safford, for the plaintiff and other parties to the agreement, supported the application.

THE PRESIDENT (SIR JAMES HANNEN).

—In this case I was asked to confirm an arrangement which has been entered into between the parties, so as to bind a married woman and certain infants. It has been assumed by those who made the application, I daresay from some analogy with proceedings in the Chancery Division, that this division was possessed of this case in the same way. But that is not so. There has been no action commenced in this division. There has been a proceeding by *caveat* and warning; but by the Judicature Act an action can only be commenced by issuing a writ, and no writ has been issued. Therefore there is no litigation in this division, and nothing upon which this Court could proceed. But, in addition, I am extremely unwilling, and do not at present see the circumstances under which I should bind infants to the consequences of any compromise which is entered into by the parties to a Probate cause before me. I have no means of forming any judgment upon the wisdom and prudence of any compromise that may be entered into. My duty is to determine whether or no a particular will is the will of the deceased person; but to enable me to tell what are the grounds upon which counsel came to the conclusion that it would be prudent to make a compromise, it would be necessary that I should be informed not merely as to the contents of their briefs, but the impression made upon the persons who have seen the witnesses and examined them. I am always willing to give my assistance to counsel when I am consulted as to whether or no a particular arrangement should be carried out; but I always do so with this reservation, that upon their statements, as far as I can judge, it seems to be expedient, and I do not thereby intend to bind infants or any other persons. I have made these observations as a guide in future cases, but for the present it is sufficient to say I am asked to sanction an arrangement in a case which does not even exist.

Solicitors — Brighton, Parker & Norman, for plaintiffs; T. W. Rogers, for defendant.

[APPEAL FROM THE CITY OF LONDON COURT.]

ADMIRALTY. }

1881.

March 6. }

THE AID.

Jurisdiction—Difference of Opinion between Judge and Nautical Assessors—Respective Functions of Judge and Assessors.

The Court should be guided by the advice of the assessors only on matters of nautical science, but if it holds a different opinion to them, even on such questions, judgment must be given in accordance with that opinion. Semble, the function of assessors is merely to advise the Court on matters of nautical science, not to decide issues of fact.

This was an appeal from the City of London Court.

Myburgh, for the appellants.

O. Hall, for the respondents.

SIR ROBERT PHILLIMORE.—I need not trouble the counsel for the respondents. This is an appeal from the decision of the City of London Court, in an action of collision.

A collision took place between the yacht *Lily* and one of two barges which were being towed by the steam-tug *Aid*. Both vessels were going down the river Thames, and the collision took place off Blackwall. The parts of the vessels that came into contact were the stem of the port barge with the taffrail of the *Lily*. No lives were lost, but the *Lily* sank in consequence of the collision. The first question to be decided is, On which vessel was the duty of getting out of the way cast?—clearly it was the duty of the steam-tug to get out of the way of the yacht. The owners of the steam-tug do not deny this, and by their evidence they practically admit it. But their defence is that those on board the *Lily* invited the *Aid* to give the *Lily* a friendly tow; that in consequence of this invitation the *Aid* kept on her course, and that the *Lily* is to blame for having brought about the collision. There is a conflict of evidence in the case. According to the evidence on behalf of the owners of the *Aid*, there was a man standing on

the yacht with a rope in his hand as if he wanted a tow. This is positively denied by the man himself and the other witnesses called for the owners of the *Lily*, and is supported by the statement of one witness alone. I have no doubt upon the evidence that it is not proved that this man carried a rope in his hand, as if he was signalling to the other vessel that he wanted a tow. On the contrary, I think the evidence given on behalf of the owners of the *Aid* on this point is disproved. The evidence then being disproved, the next question is, whether, without assuming it to have been disproved that the yacht did give a friendly invitation to the steam-tug to be given a tow, those on board the *Aid* were not bound to take care that the *Aid* was kept out of the way of the *Lily*. The evidence given by the master of the *Aid* is to the effect that he expected the yacht to come alongside, but that instead of doing so that vessel came under the stem of the port barge. The following questions and answers occur in the transcript of the shorthand notes of the cross-examination of the same witness:—

“Q. You say that the yacht had too much way; and what was it from—a breeze?—A. There was no breeze at all. Q. What was it from?—A. By their rowing and the small sails as well. Q. With one sweep?—A. Yes; an oar was out—the starboard oar that was helping her to us.”

I put it to the elder brethren whether this evidence proved any conduct on the part of the yacht that contributed to the collision, and in their opinion the yacht was in no way to blame.

The opinion that the yacht was not to blame was in the judgment of the Court below a wrong judgment. The opinion of the learned Judge of the Court below was that it had been proved that there had been a friendly request by this man standing on board the yacht for a tow. The learned Judge of the Court below believed this story, and the nautical assessors by whom he was assisted disbelieved it. The learned Judge came to the conclusion, in his own opinion, that the story as to this invitation to be given a tow was true, and that in consequence

The Aid, Adm.

of this invitation the *Aid* kept her course; but the opinion of the nautical assessors was different.

The learned Judge was bound to give a judgment in accordance with his own opinion; but he took an erroneous view of his duty, and ordered judgment to be taken in accordance with what was not his own opinion. It is clear that in all these cases the responsibility of the decision rests upon the Judge. It may have been his duty, according to the circumstances of the case, to give more or less weight to the opinion of the nautical assessors. On questions of nautical science he would be guided by their opinion, but not contrary to his own opinion. In other cases of what might be called common evidence, it is not his duty to ask the opinion of the assessors at all: he may ask their opinion on questions within their nautical experience, but in this case it appears that the nautical assessors were of a different opinion on the whole to the opinion formed by the learned Judge himself. I therefore take this view of the case. Still, however, apart from all questions as to the duty of the learned Judge of the Court below, and the manner in which the decision of that Court was arrived at, the main question to be decided on this appeal is, whether that decision was or was not wrong, either in law or in fact; and in the result, after consideration with the elder brethren, I have arrived at the conclusion that the decision was right though the reasoning was wrong, and I therefore must dismiss the appeal with costs.

Solicitors—J. A. & H. E. Farnfield, for appellants;
Prior, Bigg, Church & Adams, for respondents.

PROBATE.

1881.

Feb. 22.

March 1.

} In the goods of SARAH ANN
COOPER (deceased).

Will of Married Woman with Husband's Consent — Husband named Executor — Death of Husband before Document proved — Probate.

A will was made by a married woman, who appointed her husband one of her executors. He assented to the making of the will, and after his wife's death he expressed his intention to take probate of it, but died before doing so. The Court held that he had not withdrawn his consent, and decreed probate of the will to the surviving executor.

Sarah Ann Cooper, wife of James Cooper, of Hagley, in the county of Worcester, builder, died on the 19th of September, 1880. She made her will, with the consent of her husband, on the 23rd of August, 1880, and thereof appointed her husband and her brother, Thomas Taylor, executors. The consent of the husband was contained in the following memorandum, which was signed by him: "I, James Cooper, of Hagley, in the county of Worcester, builder, acknowledge that the sum of 400*l.* and 200*l.* now in the hands of Mr. L. D. Broughton, solicitor, Birmingham, is the separate estate of my wife, Sarah Ann Cooper, to will and dispose of as she may think fit. Dated this 23rd day of August, 1880. James Cooper." It further appeared from the affidavits filed in the matter, that after his wife's death he expressed his intention to take probate of the will, but was prevented by continued illness from doing so; and he died on the 30th of December, 1880, leaving the will unproved.

Pritchard, for the surviving executor, moved the Court for probate.—The husband's consent is to be implied from the circumstances—*Brook v. Turner* (1); and consent once given cannot be withdrawn—*Maas v. Sheffield* (2). Where the husband has consented to the making of the

(1) 2 Mod. 172.

(2) 1 Robert. 364; 4 Notes of Cas. 357.

In the goods of Sarah Ann Cooper, Prob.

will slight proof will be sufficient to make out the continuance of the husband's consent after death—*Fraser's Note to Force and Hembling's Case* (3).

Our. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on March 1).—In this case the testatrix, a married woman, who died in September, 1880, made her will on the 23rd of August in the same year. The will was made with the consent of her husband, and he signed a memorandum to that effect. After her death it was intended that the will should be proved by her husband and the other executor appointed by it. That could not be done in consequence of the husband's illness; but down to his death he never in any way withdrew his consent. In these circumstances, I think the will is entitled to probate, and decree accordingly.

Solicitors—Kennedy, Hughes & Kennedy, agents for L. D. Broughton, Birmingham.

PROBATE. } *In the goods of SOPHIA MATILDA*
1881. } *HEATHCOTE (deceased).*
Feb. 15. }

Will of Married Woman made under Power—Power not recited in Will—Codicil executed during Widowhood referring to Will—Probate.

A married woman executed in duplicate a will under a power, but did not recite the power in the instrument. On her husband's death she executed a codicil, also in duplicate, to her "last will and testament." The codicil was written on the sheets of paper containing the will, and the only known will in existence was that which she made during coverture:—Held, that the will was identified and confirmed by the codicil, and probate was granted of both documents.

Sophia Matilda Heathcote, late of North Luffenham Hall, in the county of Rutland, widow, deceased, died on the 20th of November, 1880, leaving a du-

plicate will, dated the 17th of November, 1874 (executed during coverture), and a duplicate codicil, dated the 1st of November, 1880, executed during widowhood, after the death of her husband, William Henry Heathcote.

By a settlement made upon the marriage of the said William Henry Heathcote with the deceased, then Sophia Matilda Wright, spinster, daughter of Thomas Wright, of Upton Hall, Notta, dated the 14th of December, 1833, a sum of 10,000*l.*, which William Henry Heathcote was entitled to receive within six calendar months next after the decease of his father, Sir Gilbert Heathcote, was settled upon William Henry Heathcote for his life, and after his decease upon Sophia Matilda Wright for her life, and after their deaths in trust for their children as they or the survivor of them should by deed or will appoint, and, in default of appointment, for the children equally, with a proviso that if there were no children of the marriage, the 10,000*l.* should, after Mrs. Heathcote's death, be held in trust for William Henry Heathcote.

By the same settlement the sum of 5,000*l.* and of 4,551*l.* 18*s.* 5*d.* Reduced Three per Cents. were settled upon the husband for life, remainder to the wife for life, remainder to the children as the husband and wife or the survivor of them should by deed or will appoint, and, in default of appointment, to the children equally, with a proviso that if there were no children of the marriage the 5,000*l.* and 4,551*l.* 18*s.* 5*d.* should be held upon trust, if the wife should survive the husband, for the wife absolutely, but if the husband should survive the wife, then upon trust for such persons as the wife should by will appoint, and, in default of appointment, for such persons as would have been the next-of-kin of the wife had she died unmarried. And in the same settlement was contained a covenant by the said William Henry Heathcote and Sophia Matilda Wright (the deceased) to assign to the trustees thereof all real and personal property which might, to the amount of 100*l.* at one time, vest in the said Sophia Matilda Wright (the deceased) during the joint lives of

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herself and the said William Henry Heathcote, as to such part as should be personal property and be in money or stocks, upon the same trusts as were thereinbefore declared concerning the said sums of 5,000*l.* and 4,551*l.* 18*s.* 5*d.* Reduced Three per Cents.

There were no children of the marriage.

By the will bearing date the 17th of November, 1874, and executed in duplicate, the said Sophia Matilda Heathcote bequeathed pecuniary legacies amounting in all to 13,150*l.*, and appointed the Rev. Frederick Heathcote Sutton residuary legatee, and she further nominated him and Mr. Thomas Barronghes her executors. Both parts of the said will were in the handwriting of the testatrix, but it contained no reference to the power under which it was made.

William Henry Heathcote, the husband of the deceased, made a will bearing date the 17th of June, 1875, whereof he appointed her sole executrix and universal legatee and devisee; and he died on the 17th of October, 1880, without having revoked or altered the said will.

On the 1st of November, 1880, the deceased duly executed in duplicate a codicil which began—"This is a codicil to the last will and testament of me, Sophia Matilda Heathcote, of North Luffenham, Rutland." Both parts of the codicil were in her own handwriting, and were written upon each of the two sheets of paper containing the two parts of the duplicate will of the 17th of November, 1874. By the codicil she bequeathed pecuniary legacies amounting in all to 29,708*l.* 1*s.* (including the 10,000*l.* settled upon her husband and herself at their marriage), and various specific legacies of personal chattels.

Inderwick (with him *Searle*) moved the Court to decree probate of the will and codicil to the executors named in the will. The question was, Was there anything in the case to take it out of the ordinary rule that the will was incorporated by reference to it in the codicil? It was submitted that there was not. If there were any doubt as to the will being the document to which the testatrix referred in the codicil, parol evidence was

admissible to remove it—*Allen v. Maddock* (1).

[THE PRESIDENT.—She had a power under the settlement to make this will at the time she made it, providing for the events which have occurred.]

It is difficult to say that. She had power to make an operative will if she predeceased her husband, but no question as to the power arises here. The question is, Is the will incorporated in the codicil? We submit that it is, and that it is entitled to probate with the codicil. There is no other known will of the testatrix in existence, and an affidavit to that effect can be supplied. The codicil being written on the same paper, the Court would be justified in coming to the conclusion that it is the document to which she referred as her last will and testament.

Bayford, on behalf of certain of the next-of-kin, supported the application.

Dr. Tristram and *Pritchard*, for others of the next-of-kin and parties entitled in distribution, opposed it.—The case must ultimately go to the Court of Construction; but it is admitted that the question for present determination is, whether the codicil sufficiently identifies the will so as to entitle it to probate. It is submitted that it does not. The case goes farther than any other case. The codicil contains a bare reference to a last will and testament, but in *Allen v. Maddock* (1) the codicil contained also a reference to the fact that an executor was appointed under the will, and as to what he was to do. Mere enumeration of a series of codicils will not suffice to incorporate one of the earlier of the series which was imperfectly executed—*Stockil v. Punshon* (2).

THE PRESIDENT (SIR JAMES HANNEN).—The only question raised for my determination is, whether or not the will of 1874 is sufficiently identified as the "last will and testament" referred to in the codicil. I have nothing to do with any question of construction. I have simply to say whether or not I am satisfied that the will of 1874 is the document referred to. It appears to me that the case is

(1) 11 Moore P.C. 457.

(2) *Ante*, p. 14.

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governed by the passage (p. 441) in *Allen v. Maddock* (1), to which I called attention in the course of the argument: "It may be said that, on the present occasion, the Court of Probate is to a certain extent a Court of Construction; for it has to determine what is the meaning of the reference made by the testatrix in her codicil to her last will and testament (the executor under which is to determine upon one of the gifts in the codicil), and whether any, and, if any, what instrument found at her death is thereby referred to. This question is one of fact which obviously must be explained, and can only be explained by parol evidence. At first sight there is no difficulty; there is no ambiguity whatever in the expression by which the reference is made. Parol evidence must necessarily be received to prove whether there is or is not in existence at the testatrix's death any such instrument as is referred to by the codicil. For this purpose, enquiry must be made and evidence must be offered to shew what papers there were at the date of the codicil which could answer the description contained in the codicil; and the Court, having by these means placed itself in the situation of the testatrix, and acquired, as far as possible, all the knowledge which the testatrix possessed, must say, upon a consideration of those extrinsic circumstances, whether the paper is identified or not."

With regard to the case of *Stockil v. Punshon* (2) to which reference has been made, and which was before me some little time ago, upon the statement of Dr. Tristram that it was perfectly immaterial which course was pursued, I simply said that the bare fact of enumerating the codicils was not sufficient for the purpose of identification and incorporation. It was not necessary for me to go into the question whether extraneous evidence would be admissible to connect one with the other. It was a case in which it was of no importance which way the Court decided, and I therefore did not go into the subject, but acted on the impression that the bare fact of enumeration was not sufficient. That case, therefore, does not in any way cause an embarrassment. There is no incon-

sistency between the two cases, because here it is to be taken by admission that there is no other known instrument save this will to which the reference made in the codicil could apply, and it is upon that assumption that I decide that the will so referred to in the codicil must be admitted to probate. An affidavit of the character mentioned by Mr. Inderwick must, however, be supplied.

Solicitor—M. Jameson, agent for H. Houchen, Thetford, for the executors.

PROBATE. }
1881. } WILKINSON v. CORFIELD.
Jan. 12, 26. }

Codicil proved by Legatee—Costs as of Executor proving.

A legatee who propounds a codicil and establishes its validity is entitled to the same costs as those to which an executor would be entitled.

A died leaving a will and codicil. B, the executor, took probate only of the will. O, a legatee under the codicil, propounded the document, and proof of it was opposed by B, the executor, and defendant in the action. O having established its validity, the Court pronounced for the codicil and condemned B in costs, and gave the plaintiff also out of the estate such sum nomine expensarum as would cover the additional expenses incurred by her.

Richard Corfield, late of Bradney, in the parish of Worfield, in the county of Salop, farmer, deceased, died on the 1st of May, 1879, having made a will dated the 22nd of November, 1878, and a codicil dated the 27th of April, 1879.

By the will the testator gave all his property to his brother, the defendant Thomas Corfield, and his sister, Eliza Corfield, absolutely, subject to an annuity of 15*l.*, and appointed them executor and executrix. By the codicil the testator gave the plaintiff Mary Wilkinson an annuity of 20*l.* charged upon his property generally. The testator's sister died in

Wilkinson v. Corfield, Prob.

his lifetime, and the defendant proved the will only. The plaintiff thereupon propounded the codicil, to which the defendant pleaded that it was not duly executed, that deceased did not know and approve of the contents thereof, and that it was revoked by the deceased by having been torn by him and the pieces burnt by the defendant by the direction of the deceased. At the hearing, before the Court itself, it was proved that the codicil was duly executed by the testator, who thoroughly approved of it, and that it was given by him to one of the attesting witnesses, who subsequently sent it back to the defendant. The defendant alleged that on the 30th of April he gave the codicil to the testator, who tore it into three pieces, and told him to put them on the fire, which he accordingly did. The Court nevertheless found that the codicil had not been revoked, and condemned the defendant in costs.

Inderwick (Bayford with him), applied for an order that the plaintiff's extra costs should be paid out of the estate.

Staveley Hill (with him Searle), for the defendant.

Our. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) delivered the following judgment on January 26:—

The question in this case was this: A legatee propounded a codicil made in her favour and succeeded; and an application was made to me to allow her her costs, upon the ground that in propounding this codicil, which turned out to be the testamentary instrument of the testator, she ought to be allowed those costs, which, if the executor had done his duty, he would have been able to take for himself out of the estate; and I am of opinion that that is a reasonable application. In the first place, it is very clear that a legatee is entitled to have his expenses paid when he establishes a testamentary paper. That is laid down in *Sutton v. Drax* (1) in these simple but very emphatic terms: "Where a legatee propounds a paper and establishes it, thereby

fulfilling the duty of the executor, the legatee is entitled to have the expenses paid out of the estate of the deceased. This is the rule of the Court." Now it is obvious that, in this case, if I allowed no more than the ordinary costs the legatee would have no benefit from her small annuity of 20*l.* for a considerable time, and I therefore think I ought to allow her costs on the same scale practically as the executor would himself have been entitled to receive. I shall therefore make the order in the form which I find has been used in an analogous case. I refer to the case of *Broom v. Broom* (2), in which a sum was allowed *nomine expensarum*. Therefore the order I shall make will be in these terms: "I further give to the plaintiff, *nomine expensarum*, such sum as shall be considered by the Registrar sufficient to cover the additional expenses of the plaintiff of and incidental to these proceedings, to be paid out of the estate of the deceased."

Solicitors—Prior & Co., for plaintiff; Truefitt & Gane, agents for T. B. Hardwick, Bridgnorth, for defendant.

PROBATE.

1881.

Feb. 8.

TAYLOR v. TAYLOR.

Administration pending Suit—Receiver pending Suit—Termination of—Costs.

The duties of an administrator or receiver pending suit commence from the date of the order of appointment, and, if the decree in the action is appealed from, they do not cease until the appeal has been disposed of.

The costs of an administrator and receiver pending suit were allowed from the date of appointment until the dismissal of the appeal from the decree in the action.

This was a summons in objection to a taxation of costs.

The plaintiffs, as executors, propounded

(1) 2 Phill. 323.

(2) Deane & Sw. 253.

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the will of Henry Taylor, deceased, which was opposed by the defendant, the daughter and heiress-at-law.

The following are the material dates:—
1878. December 24. Action commenced.

1879. February 25. Order appointing Mr. Ward administrator and receiver pending suit.

March 21. Order for receiver pending suit sealed.

April 5. Letters of administration pending suit issued.

May 3 and 6. Action heard; verdict and sentence pronouncing against the will and condemning the plaintiffs in costs.

May 21. Rule *nisi* for new trial.

July 1. Rule discharged.

1880. March 9. Order authorising Mr. Ward as administrator and receiver pending suit to sell farming stock, &c.

March 23. Similar order authorising him to give a tenant notice to quit.

April 20 and 23. Appeal from order discharging the rule *nisi* heard and appeal dismissed.

May 10. Letters of administration granted to widow of deceased.

On the taxation the Registrar disallowed all the costs of Mr. Ward and his solicitor between the 25th of February, 1879, and the dates when the letters of administration appointing him issued, and the order for receiver was sealed, on the ground that Mr. Ward had no power to act till then.

The Registrar also disallowed Mr. Ward's and his solicitor's costs from the 6th of May, 1879, on the ground that the final decree was made on that day, and that the defendant might at once have taken out a grant of letters of administration, notwithstanding the appeal, or might have obtained fresh appointments as administrator and receiver pending suit—*Charlton v. Hindmarsh* (1).

Bayford, in objection to the taxation, cited *Fisher v. Joy* (2), *Wells v. Wells* and *Hudson* (3) and *Jones v. Jones* (4).

Jeune, in support of taxation.

(1) 1 Sw. & Tr. 519.

(2) Law Rep. 4 P. & D. 231.

(3) 3 Sw. & Tr. 542.

(4) Law Rep. 2 P. & D. 232.

THE PRESIDENT (SIR JAMES HANNEN) considered that the appeal operated as an extension of the suit, and also that the plaintiffs, by their conduct in the case, and especially by being parties to the orders of the 9th and 23rd of March, 1880, were estopped from objecting. He therefore allowed all the costs from the date of the order appointing the administrator and receiver.

Solicitors—White & Sons, agents for Shipton & Hallowell, Chesterfield, for plaintiffs; Chorley, Crawford & Chester, for defendant.

ADMIRALTY. }
1881.
Feb. 25. }

THE SKANDINAV.

Charter-party—Measurement of Cargo.

The general rule that cargo is to be paid for according to the quantity measured and delivered at the port of discharge must prevail, unless words shewing distinctly an intention that a measurement at the port of loading is to be taken are found in the charter-party.

This was an appeal from the decision of the County Court Judge at Hull, in an action by the shipowner against the cargo-owners to recover 74l. 18s. 8d. for balance of freight. By charter-party made at Stockholm on the 13th of March, 1880, it was agreed that the *Skandinav* should proceed to a good and safe port in Westervicks Custom House district, and there load a full and complete cargo of props, and being so loaded should proceed to a safe port on the east coast of Great Britain, "and deliver the same on being paid freight at and after the rate of [which was then specified] all British sterling in full per 180 English cubic feet taken on board as per Gothenburg custom." By the bill of lading the master bound himself to deliver the cargo of props "on safe arrival to order against an agreed freight as per charter-party."

The *Skandinav* arrived at the port of Werkeback, but the cargo was not measured before being shipped, the agent of

The Skandinav, Adm.

the cargo-owners having refused to measure it, although requested to do so by the master.

After the cargo had been shipped, the master telegraphed to the charterer to get a lump sum freight, to which the charterer replied: "Lump sum refused positively; I must submit to the measuring in Hull of the *Skandinav's* cargo." Accordingly, at the end of the bill of lading the master added the words, "Number of pieces, measure and quantity unknown, free from damage, cargo to be measured up at port of discharge at charterer's expense, according to his telegram." The cargo on arrival was measured by the Custom House officials according to the English measurement, which was most favourable to the cargo-owners, and the shipowner then brought his action against the cargo-owners for the balance of freight, which was admittedly due, if the cargo was to be measured according to the Gothenburg custom.

The County Court Judge decided in favour of the plaintiff, the shipowner, and gave judgment for him for 74*l.* 18*s.* 8*d.* with costs.

The defendant appealed.

Bucknill, for the appellant, contended that the freight should be paid by measurement at the port of discharge. He relied on *Coulthurst v. Sweet* (1).

J. G. Witt, for the respondent.—The custom referred to in the charter-party is that of "measurement." The meaning of the charter-party is thirty-five shillings for every 180 English cubic feet as ascertained by Gothenburg measurement. It was never suggested in the Court below that there was any custom as to "loading" at Gothenburg, and no evidence was offered as to the existence of any such custom.

SIR R. J. PHILLIMORE.—I am somewhat unfortunately situated for the purpose of deciding this appeal, for the case has been brought before me without any pleadings, and without any assistance either from the notes of the learned Judge of the Court below, or from any reasons

for his judgment which I can rely upon. I naturally expected in a case of this description to find the reasons for the decision of the learned Judge of the Court below set out at some length. So far, however, as I am able to understand the real question to be decided, it is as to the proper construction of the following words in the charter-party: "Taken on board as per Gothenburg custom"—that is, whether these words relate to a custom of loading at Gothenburg, or to the method of ascertaining the measurement of the cargo. Now the rule which it is admitted I should have had to follow in this case, if the words I have referred to had not been contained in the charter-party, would have been to have ascertained the amount of freight payable according to the English measurement at the port of delivery. My attention has been called to the case of *Coulthurst v. Sweet* (1), in which, in the judgment of Mr. Justice Willes, is the following quotation from Mr. Baron Martin's judgment in *Gibson v. Sturge* (2): "In my opinion, therefore, in the absence of contract upon the subject, and considering what is most just and reasonable, what is most analogous to cases of a similar kind, and what is the most convenient practical rule upon the subject, and the most beneficial to all parties interested, the measurement at the port of delivery affords a test for the ascertainment of freight preferable to that of measurement at the port of loading. If this be found inconvenient in any particular classes of cargo, a few words inserted in the bill of lading would effectually remedy it." Similarly in this case, if the respondents had wished the cargo to have been measured according to Gothenburg custom, they could easily have inserted apt words for the purpose. The rule of measurement of cargo at the port of delivery being then admittedly the rule which I should have had to have followed if the words "Taken on board as per Gothenburg custom" had been left out, the question to be considered comes back to this: whether these words, taken in their plain and obvious meaning, are such as to render it necessary for me to put the

(1) *Law Rep.* 1 C.P. 649.

(2) 10 *Exch. Rep.* 622, 636; 24 *Law J. Rep. Exch.* 121.

The Skandinav, Adm.

construction contended for by the respondents on the charter-party—that is, that the words in question mean that freight should be payable according to the measurement of the cargo as per Gothenburg custom. No authority in favour of this contention has been produced to me. Moreover, I may observe that it appears that the cargo was loaded at Gothenburg without having been measured. I am of opinion, in the absence of any authority cited to the contrary, that the words I have quoted must be construed to mean loaded on board according to the custom of loading at Gothenburg, and that the contract in this case was, to be laden on board according to the custom at Gothenburg, but to be measured at the port of delivery according to English measurement. I must accordingly allow this appeal, and give judgment for the appellant with costs.

Solicitors—Pritchard & Sons, agents for J. & T. W. Hearfield, Hull, for appellant; C. A. Clulow, agent for A. M. Jackson, Hull, for respondent.

PROBATE. }
1881. } *In the goods of THOMAS CURTIS*
March 15. } BRAKE.
April 5. }

*Executor—Erroneous Description of—
Ambiguity—Extrinsic Evidence.*

Testator, a Congregational minister, appointed "William McCormack, of Canonbury," an executor of his will. There was no person answering the description "William McCormack, of Canonbury," but there was a Thomas McCormack, who had been for several years one of the deacons at the testator's chapel, and he had a son named William Abraham McCormack:—Held, that extrinsic evidence was admissible to shew who was intended by the testator to be his executor.

Thomas Curtis Brake, late of 107 Petherton Road, Highbury, in the county of Middlesex, Congregational minister, deceased, died on the 30th of December, 1880, having by his last will, dated the 15th of July, 1879, appointed Henry Sim-

mons and William McCormack, of Canonbury, executors thereof. There was no person answering the description, "William McCormack, of Canonbury"; but it appeared from the affidavits filed in the matter that the intention of the testator was to appoint Mr. Thomas McCormack and Mr. Simmons, two deacons of his chapel, the executors of his will, and that he so stated to one of the attesting witnesses who prepared the will and who filled in the name "William McCormack," believing that to be his correct description. Mr. McCormack's Christian name was Thomas, but he had a son named William Abraham McCormack.

Agabet moved the Court to decree probate of the will to Mr. Thomas McCormack and Mr. Simmons. There was an ambiguity in the instrument and evidence was admissible to clear it up—*In the goods of Peel* (1).

Cour. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on April 5).—In this case the testator appointed two persons his executors, describing one of them as "William McCormack, of Canonbury." There was not in fact any person of that name. There was a person bearing the name of William Abraham McCormack, and the question is, whether the fact that there is no person bearing the name of William McCormack, while there is a person bearing the name of William Abraham McCormack, makes extraneous evidence admissible to shew who was intended by the testator. I am opinion that it does; and when the extraneous evidence is admitted it shews that William Abraham McCormack was not intended, but his father, whose name is Thomas McCormack. I therefore direct probate to issue to him and Mr. Simmons as the executors.

Solicitors—W. J. Child & Son.

(1) 39 Law J. Rep. Prob. & M. 36; Law Rep. 2 P. & D. 46.

PROBATE. }
1881.
Feb. 1. }

MUDGE V. ADAMS.*

Husband and Wife—Protection Order—Death of Wife—Will of Wife—Probate Action—Statement of Defence and Counter-claim praying for Discharge of Protection Order—Demurrer—Divorce Act (20 & 21 Vict. c. 85), ss. 21, 23, 46—Divorce and Matrimonial Causes Amendment Act (20 & 21 Vict. c. 108), s. 8—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24. sub-s. 3.

It is competent to the husband or any person claiming under him to apply after the death of the wife to discharge a protection order on the ground that it had been obtained without his knowledge and by means of fraud and false representations, and that he was not guilty of desertion. The plaintiff, as executor, propounded the will of the defendant's wife. The statement of claim alleged that the deceased had duly executed the will when living apart from her husband, after obtaining a protection order, and being possessed of separate estate. The statement of defence alleged that the defendant had not been guilty of desertion, that the protection order had been obtained without his knowledge, and by fraud and false representation and false statements, and ought to be set aside, and denied that the deceased was possessed of separate estate. The defendant by his counter-claim claimed—first, that it might be declared that the protection order was fraudulent and void, and that the same be set aside and discharged; second, that the Court should pronounce against the will propounded by the plaintiff; third, that the Court should decree to the defendant a grant of letters of administration of the personal estate of the deceased as her lawful husband; fourth, that in the alternative the Court should decree to the defendant a grant of letters of administration of so much of the personal estate and effects of the deceased as she had no power to dispose of by her will. The plaintiff demurred to the allegation in the statement of defence that the protection had been obtained without the

knowledge of the defendant, and by fraud and by false representations and statements, and ought to be set aside, on the ground that it was not alleged that the protection order had been revoked, and that it was not competent to the defendant in this proceeding to assail its validity. The plaintiff further replied that the defendant had for a long time during the lifetime of the deceased known of and acquiesced in the existence of the protection order, and had allowed the deceased to act thereunder, and that he was thereby estopped from now questioning its validity:—Held, that the counter-claim was good, and that an application to discharge the protection order could be entertained in a probate action.

This was a demurrer to certain paragraphs of a statement of defence and counter-claim. The plaintiff propounded the will of Mary Adams, the wife of the defendant. The statement of claim alleged that the said Mary Adams died on the 2nd of June, 1880, having on the 13th of January, 1880, duly executed a will of which she appointed the plaintiff executor; that at the date of the execution of the will the deceased was living apart from her husband, the defendant, and that she had obtained a protection order on the 14th of January, 1860, and had been at her death possessed of separate estate. It was further alleged that the deceased was entitled to make a will by virtue of a power contained in the will of her mother, Mary Mudge, deceased, bearing date the 22nd of December, 1870. The plaintiff claimed that the Court should decree probate of the will of Mary Adams in solemn form of law. By the statement of defence the due execution of the will and the appointment of the plaintiff as the executor were denied. The 4th paragraph of the statement was as follows: "The defendant admits that the said deceased was his wife, and that she went away and was living separate from him, and that she obtained a protection order against him; but he says that the said order was obtained without his knowledge, and by fraud and by false representations and false statements, and ought to be set aside, and he denies that the said deceased

* This case is reported by Mr. J. R. Kelly.
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was entitled to make a will by virtue of any power contained in any will, and says that she was not possessed of any separate estate."

By way of counter-claim the defendant claimed that the said Mary Adams was at the time of her decease his lawful wife, and that he was entitled to all the property of which she had died possessed; that, besides the property to which (if any) the power under her mother's will applied, the deceased had died possessed of other property to which it did not apply, and which she had no power to dispose of by will; that the protection order had been obtained by the deceased without the knowledge of the defendant and by fraud and by means of a false representation that the defendant had deserted her, whereas in truth and in fact he never had deserted her, and the defendant pleaded that the said order ought to be set aside and discharged; that the deceased at the time of her decease had been possessed of certain property which she had acquired previously to the alleged desertion upon which the protection order had been granted, and which property had not been protected by the said protection order, and the deceased had had no power to dispose of the same by will.

The defendant claimed, first, that it might be declared that the said protection order was fraudulent and void, and that the same might be set aside and discharged; second, that the Court should pronounce against the will propounded by the plaintiff; third, that the Court should decree to the defendant a grant of letters of administration of the personal estate of the deceased as her lawful husband; fourth, in the alternative, that the Court should decree to the defendant a grant of letters of administration of so much of the personal estate and effects of the said deceased as she had no power to dispose of by her will.

The plaintiff in his reply took issue on the whole of the statement of defence, and also pleaded that the deceased had not died possessed of any property other than separate estate, or such as had not been covered by the power of appointment given to her under her mother's will. In the reply it was further alleged

that the defendant for a long time during the lifetime of the deceased had known of and acquiesced in the existence of the protection order, and had allowed the deceased to act thereunder, and that he was thereby estopped from now questioning its validity. The plaintiff also demurred to the allegations in the fourth paragraph of the statement of defence, that the protection order had been obtained without the knowledge of the defendant, and by fraud and false representations and statements, and ought to be set aside, and to the allegations of the defendant that he had not been guilty of desertion, and therefore the protection order ought to be set aside and discharged.

Bayford, for the plaintiff, in support of the demurrer.—A protection order could not be revoked after the death of the party in whose favour it had been made. It was not necessary to prove this, as the defendant in the present case had taken no proceedings to set the order aside; and this was not the Court to discharge it.

[THE PRESIDENT.—I am sitting as a Judge of the High Court of Justice, and I should not allow substantial justice to be denied for the sake of a form.]

Until revoked, the order must be dealt with as subsisting, and the defendant has not pleaded that he has taken any steps to discharge it. He cannot obtain its reversal in a probate action as he seeks to do in his counter-claim.

[THE PRESIDENT.—If that were established, I should stay these proceedings until the defendant had taken steps to discharge the protection order. If he did so, I might allow him to discharge that order and then amend the pleadings in this action by alleging that the order had been discharged.]

By the protection order the defendant was excluded from any interest in his wife's estate. The order was made under section 21 of 20 & 21 Vict. c. 85, by which a wife's earnings and property acquired since the commencement of the desertion are to belong to her "as if she were a *feme sole*." The wife could deal with such property and earnings by

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will—In the goods of *Elliott* (1), In the goods of *Stephenson* (2). The latter case was one where a grant of letters of administration had been made to the son of a married woman who had obtained a protection order and had died intestate, to the exclusion of her husband. The plaintiff's interest under the will of the testatrix could not be affected by the discharge of the protection order, since it was a right arising in respect of an act of the wife done by her after the time at which the protection order had been obtained and before the date (if any) of its discharge. The statement of defence and counter-claim contained mixed questions of law and fact, and were embarrassing—*Stokes v. Grant* (3). The words "at any time thereafter" in section 23 of 20 & 21 Vict. c. 85 must be taken to limit the time for the reversal of a decree to the lifetime of the person who had obtained it; and this would be so also in the case of a protection order.

Inderwick, against the demurrer.—The course of proceeding now adopted by the defendant was the right one, and there was nothing to limit the power of the Court to the wife's lifetime. Fraud might be pleaded at any time. A husband had a right to have the question of the power of his wife to make a will decided, and the defendant had applied to this Court—the proper Court—to have the protection order set aside. The validity of the protection order and of the will could be tried by the Court in the same suit—Judicature Act, 1873, s. 24, sub-s. 3.

THE PRESIDENT (SIR JAMES HANNEN).

—I am clearly of opinion that the husband is entitled, though the wife is dead, to shew that this protection order ought not to have been obtained by reason of his absence and of fraud, and that he is entitled to relief by the Court discharging it, and I arrive at that conclusion on this ground: In the first place, it may be taken as a general

principle that that which has been obtained by fraud can always be set aside by the person who has been defrauded unless the interests of innocent persons have intervened, which might be affected by the setting aside for fraud. That is a general rule applicable to almost all transactions in life. In this case the allegation is that the husband has been defrauded by the wife in his absence, and it is a startling proposition that he is to be precluded from saying that he has been wronged by the mere fact that his wife is dead. Of course if, as I say, the interests of other parties would be affected, that is another matter, but where we are dealing with the making of a will by the wife nobody else's rights can be affected. The executors and legatees are persons claiming the benefit of a gift made to them by the wife, but they have no rights which there would be any injustice in setting aside, if the power of conferring those benefits is based upon a fraudulent transaction on her part. And, further, it appears to me that the language of the 21st section of the Divorce Act of 1857 shews that the Legislature intended that any person who would be injured by the act of the wife, and who claimed through the husband, would have the same rights as the husband. And it would be quite unreasonable to suppose that where the Legislature is interposing for the protection of the creditors of the husband or persons claiming under him, such interposition should have been limited in time to the duration of the wife's life. There could be just the same reason for protecting the creditor or the person claiming under the husband after the death of the wife as during her life. Of course there would be greater difficulties of proof, but this would be borne in mind by that tribunal which might have to determine the question whether or not the protection order should be set aside. The husband comes with a heavy *onus* upon him to establish that that which was done by his wife twenty years ago was done fraudulently; and of course if it can be proved that he has been knowingly lying by, the *onus* imposed upon him would be still heavier. But did the Legislature intend, what it has

(1) 40 Law J. Rep. Prob. & M. 76; Law Rep. 2 P. & D. 274.

(2) 36 Law J. Rep. Prob. & M. 20; Law Rep. 1 P. & D. 287.

(3) Law Rep. 4 C.P.D. 25.

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not in any way said, that this proceeding must be taken during the life of the wife? The section enacts that a wife living under a protection order shall be in the same position and have the same rights as if she had obtained a judicial separation; and under the section which relates to the judicial separation it is said that any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may at any time thereafter present a petition to the Court praying a reversal of the decree on the ground that it was obtained in his or her absence, and that there was reasonable ground for the alleged desertion. The statute expressly says that in that case the application may be made at any time, and I can see no reason for limiting the time in this case to the life of the party who has obtained the improper decree. The sections of the subsequent Act which have been referred to do not appear to me to affect the argument adversely to the proposition which I am now propounding. The 8th section provides that no discharge, variation or reversal of such order or decree shall prejudice or affect any rights which any person would have had in case the same had not been so reversed, varied or discharged in respect of any debts, contracts or acts of the wife incurred or entered into or done between the times of the making of such order or decree, and of the discharge, variation or reversal thereof. Now I am of opinion that the making of a will is not one of the acts of the wife which are referred to, but it is not necessary now to say what will be the effect if, upon hearing evidence, I should rescind or discharge the order. That, of course, depends upon the facts of the case. I repeat, therefore, I am of opinion that it is competent to the husband, or anyone claiming under him, to apply for the discharge of the order though the wife is dead. That is the point of substance.

Now as to the point of the form of the pleadings. I am of opinion, upon the best consideration I can give to the case—and it is certainly not free from doubt—that this pleading is good and that the demurrer ought not to be allowed. If

the husband had proceeded by a separate proceeding, the statute does not prescribe what the form of this proceeding should be, and so I suppose it would be competent for me to give such general directions as I might think necessary for the purpose of doing substantial justice between the parties. Now for that purpose I should of course think it right that I should have not only the husband before me, but any persons who might be supposed to have an interest in this matter—as for instance the executor or other representative—and I should therefore require notice to be given to the executor in order that he might have an opportunity of stating his case first as in an ordinary suit by a person claiming an administration and asserting his claim against the executor of an alleged will. The 46th section of the Divorce Act directs that “subject to such rules and regulations as may be established as herein provided, the witnesses in all proceedings before the Court, where their attendance can be had, shall be sworn and examined orally in open Court.” The mode of investigation, namely, the examination of witnesses *viva voce*, is prescribed by that Act, and the husband would be able in those proceedings to apply to me, to use the language of the section, “to discharge the order.” That he has already done, so that if I were to direct other proceedings to be taken, every single step that has been taken or which may be taken in these proceedings would have to be gone over in another shape, and it is obvious that it would be a waste of time and money that all these several steps should be taken over again. Even without the section of the Judicature Act to which I am about to refer, it would be in the highest degree convenient that any application made to me, though in the course of another proceeding, should be acted upon by me by the use of all the powers of which I am at this moment possessed. I say it would be in the highest degree convenient if I were called upon while trying a probate case to exercise the powers which I possess as a Judge having jurisdiction in all matrimonial causes—it would be highly convenient that I should at once dispose of

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it without putting the parties to the expense of going over all the steps again. It would be highly convenient for me to do what it appears to me I am now required by the Judicature Act to do. It is to be observed that this case is free from many difficulties which might be suggested if the action were not a probate action in this division. For instance, it might have been an issue *devisavit vel non* relating to realty only, or an action of the wife against the husband, or a creditor, for seizing some of her property and seeking to recover a double value, or an action on a contract by the wife. In all those cases the action must have been brought in another division, and difficulties might have arisen, as the Judge would not have original jurisdiction to set aside the protection order. But in this instance the action is brought in the division which has jurisdiction also in matrimonial causes, and the Court is armed with the full powers derived from both those systems of procedure, and can therefore apply the rules which are prescribed by the Judicature Act.

The 3rd sub-section of the 24th section of the Judicature Act of 1873 is in these terms: "The said Courts respectively"—that is, the High Courts and the Court of Appeal—"and every Judge thereof shall also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively or any Judge thereof might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner." The present case, in my opinion, comes exactly within those terms. If this defendant had instituted a suit or proceeding for the purpose of setting aside this protection order, the action would have been against this same plaintiff as claiming under the alleged will of the wife; and this section says that what might have been asserted in that suit may be asserted by way of counter-claim in

answer to the action of the plaintiff against the defendant.

Now I should observe I am dealing with the pleadings as a whole. I think as a matter of refined argument it may be said that if the plea had stood by itself it would not be good, because I agree that while the protection order is subsisting it must be respected. But the counter-claim appears to me to be good, because by it the defendant asks specifically that the protection order be discharged, which is exactly the relief he would pray in the proceedings if they had been instituted in an independent suit. I am therefore of opinion that the protection order (which is the main point) may be set aside, and I think the pleadings, including the counter-claim, are good, and I reserve all question of costs until all the issues which are very properly raised on these pleadings are determined.

Solicitors—Poole & Hughes, agents for Edmonds & Son, Totnes, for plaintiff; Wedlake & Letts, agents for F. R. Stanbury, Plymouth, for defendant.

[IN THE COURT OF APPEAL.]

ADMIRALTY. }
1881. }
May 4. }

THE CITY OF MECCA.*

Admiralty Jurisdiction—Foreign Judgment "in personam"—Action "in rem" in England.

The Court of Admiralty has no jurisdiction to enforce a judgment in personam obtained in a foreign country by an action in rem, founded on that judgment, in this country.

This was an appeal from the decision of Sir R. Phillimore, reported 49 Law J. Rep. P., D. & A. 17, refusing to set aside a writ of summons, a warrant of arrest and other proceedings in an action *in rem* brought to enforce a judgment

* *Coram* Jessel, M.R.; Baggallay, L.J.; and Lush, L.J.

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given against the captain and owners of the *City of Mecca* in the Tribunal of Commerce at Lisbon.

Benjamin, Butt and Clarkson, for the appellants, the owners of the *City of Mecca*.—The judgment of the Court below is founded on a misapprehension of the real facts of the case. From the further evidence we have obtained it is clear that the judgment of the Tribunal of Commerce, on which this action is founded, was a judgment *in personam*, that did not give the plaintiffs a maritime lien on the ship. It is a judgment against the owners personally for payment of damages. There is nothing about the ship from the beginning to the end of the proceedings, and there is no jurisdiction here to enforce a judgment *in personam* obtained in a foreign Court by an action *in rem* here. If the plaintiffs want to sue on that judgment here, they must sue *in personam*, but there can be no personal action here, because the defendants live in Glasgow, and therefore are not within the jurisdiction.

Webster, G. Bruce and Phillimore, for the respondents.—Although the original proceeding in Portugal was a personal action against the captain and owners for damages caused by the collision, yet so soon as the judgment for damages was obtained, which could not have been given had not the ship been found to blame, the owners of the *Insulana* immediately acquired a maritime lien, which is an indelible lien on the wrongdoing ship, and can be enforced by proceedings *in rem* wherever she goes, even in the hands of an innocent purchaser—*Castrique v. Imrie* (1), *The Bold Buccleugh* (2).

JESSEL, M.R.—This is, in form, an appeal from a decision of Sir Robert Phillimore, but it is not so in fact, because the facts that are before us are totally different from the facts which were before him. He decided that there had been a judgment *in rem* by the Portuguese Court having jurisdiction in Admiralty, that an action being brought on

that judgment in the High Court might be brought as an action *in rem*—that is, an action against the ship—and might be enforced in the way in which process in this action was enforced—by an arrest of the vessel. The owners have appeared under protest, and asked to set aside all those proceedings, and he decided against them on that ground. It is hardly necessary to read his judgment, but I think it is only fair, arriving as I do at a different conclusion on the present facts, to read this to shew that that is what he really said. He said, "The Court is now called upon to be antillary to the enforcement of a judgment *in rem* given by the Portuguese Court;" and then he said, "Although there is no direct precedent on the point, it is clearly for the interests of justice that this Court should continue having its hand on the *res* until the sentence be executed." That is the foundation of his judgment. It appears that the real facts of the case were not before him at all. There was an important affidavit by a clerk to the solicitors. I am far from saying that it was purposely erroneous, but it did lead to an erroneous conclusion in the mind of the learned Judge, and it probably would have led to an erroneous conclusion everyone else. It now appears that by the law of Portugal there is no such thing as an action *in rem*. It does not exist at all. What the reason may be is immaterial to enquire, and the reason given is certainly a very odd one, but still it is quite plain. This is what is said by a gentleman of great eminence in Portugal—a Portuguese advocate and president of the Association of Advocates in Lisbon, and he has practised as an advocate since 1840; and he says "that modern Portuguese law does not accept in terms the distinction of actions *in rem* and *in personam*, because Portuguese laws deal little in doctrine." Whether that reason is satisfactory to his mind or not I do not know. I am afraid it is not satisfactory to mine. That being so, the course of procedure seems to be this: They bring a personal action against the owners and the captain, who are liable for the collision, and when they have got judgment

(1) 39 Law J. Rep. C.P. 350; Law Rep. 6 H.L. Cas. 414.

(2) 7 Moore P.C. 264.

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in that action, if the owners and captain do not pay, and if the vessel, after the judgment, comes within the jurisdiction of the Portuguese Court, they enforce their personal judgment as against the vessel—under the doctrine of the law of nations, which is stated by the two advocates to be part of the law of Portugal, that damage arising from collision is a maritime lien on the vessel which is in fault, and that the lien dates from the time of collision, and of course is not created by the judgment, which merely ascertains the amount of the damage and also decides, if that is disputed, whether there is any lien at all, whether there is any fault or liability on the part of the vessel. That being so, the judgment in this case was given actually against the captain and owners by name, and there is no other judgment; and the present action is brought on that judgment and on that judgment only. There was in reality an attempt in Portugal to seize the vessel by arrest, which attempt failed, because, as I have already said, the Portuguese law does not allow the arrest of a vessel before the damage is ascertained; therefore the embargo, as it is called, was discharged, and there was no arrest of the vessel, nor does it appear that it has since come within the jurisdiction of the Court of Portugal, nor is there any maritime lien or order directing the sale of the vessel. It appears to us clear that this judgment is a personal judgment in a personal action. Then it may be said, What is there to argue? The argument presented to us by the respondents is this: First of all, it is alleged that the action in Portugal was an action for enforcing a maritime lien. Secondly, that, whatever the terms of the judgment might be, it was a judgment for enforcing a maritime lien, and a judgment *in rem*, and that, that being so, it was a judgment binding the vessel in the Courts of every civilised country under the international law. But I find the simple answer is, that it is not an action or proceeding to enforce a maritime lien; nothing of the kind appears on the proceedings. There is no suggestion from beginning to end that the ship is liable. There is no declaration that

the ship is liable, and it does not appear on the proceedings that the ship was even within the jurisdiction at the time the action commenced against the owners. An action for enforcing a maritime lien may no doubt be commenced without an actual arrest of the ship, but there is no suggestion that they intended anything of the kind; and, in fact, the law does not allow it. An action against a ship, as it is called, is not allowed by the law of Portugal. You may in England, and in most countries, proceed against the ship. The writ may be issued against the owner of such a ship, and the owner may never appear, and you get your judgment against the ship without a single person being named from beginning to end. That is an action *in rem*, and it is perfectly well understood that the judgment is against the ship. In the present case the judgment does not affect the ship at all, unless the ship should afterwards come within the jurisdiction of the Portuguese Court, and then it can be made liable by a proceeding by which you arrest the ship and get it condemned. Therefore it seems to me to be plain that this is a personal action as distinguished from an action *in rem*, and it is nothing more or less, and any attempt to make it suit something else (because the law of Portugal does not allow actions *in rem*) is to change the real nature of the action to meet the exigencies of those who want to make the judgment of the Court of Portugal go further than it really does. It appears to me, therefore, there is no longer the same state of circumstances as that in which the Judge in the Court below decided, and it is no longer a judgment *in rem*, either in form or circumstances, or an action *in rem*. Reference has been made to the case of *The Bold Buccleugh* (2), from which I will read a few words of the judgment delivered by Sir John Jervis. He says (p. 284), "Having its origin in this rule of the civil law, a maritime lien is well defined by Lord Tenterden to mean a claim or privilege upon a thing to be carried into effect by legal process; and Mr. Justice Storey (3) explains that

(3) 1 Sumner, 78.

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process to be a proceeding *in rem*, and adds, that whenever a lien or claim is given upon the thing, then the Admiralty enforces it by a proceeding *in rem*, and, indeed, is the only competent Court to enforce it. A maritime lien is the foundation of the proceeding *in rem*, a process to make perfect a right inchoate from the moment the lien attaches; and whilst it must be admitted that where such a lien exists a proceeding *in rem* may be had, it will be found to be equally true that in all cases where a proceeding *in rem* is the proper course, there a maritime lien exists, which gives a privilege or claim upon a thing, to be carried into effect by legal process." Then he refers to what occurred in that case, and adds that an action was brought in Scotland against the owners by name—very much like the action in the Portuguese Court here, but with this in addition: because there the vessel came within the jurisdiction, and was arrested, but "the seizure of the vessel was collateral to that proceeding, for the mere purpose of securing the debt." They did not get so far in Portugal. They tried, but failed. Then he says, "We have already explained that, in our judgment, a proceeding *in rem* differs from one *in personam*, and it follows that the two suits, being in their nature different, the pendency of one cannot be pleaded in suspension of the other"—that is, the formal proceedings in Scotland were against the person, although the vessel was arrested as security for the debt. It is really the form of the proceedings which must be looked at to ascertain whether it is a proceeding *in rem* or *in personam*, and it lends much greater force in the case before us when the attempt to arrest the vessel failed altogether. For this reason it seems to me we should go further than we should be warranted by any principle in going, if we said that the judgment was not a personal judgment, and that the Court was entitled to order the arrest of the vessel as if it were an action *in rem* and a judgment *in rem*. Therefore I consider this appeal ought to be allowed.

BAGGALLAY, L.J.—I am of the same opinion. On the 1st of January, 1875, a collision took place off the Portuguese coast between the British ship *City of Mecca* and a Portuguese ship called the *Insulana*. On the 1st of September, 1875, the action was commenced in Lisbon, on which this present appeal is based. It would appear that in the year 1878 or 1879 an action was brought in the Admiralty Court in England, on which this present appeal has been commenced, and when the writ was issued it had this indorsement upon it: "The plaintiffs' claim is upon a judgment of the Tribunal of Commerce of Lisbon, and the plaintiffs claim 25,000*l*." That judgment of the Tribunal of Commerce at Lisbon was a judgment pronounced on the 17th of December, 1876, and condemned the defendants, the owners of the *City of Mecca*, jointly and severally to pay to the plaintiffs the amount claimed, with interest from the date of the judgment. It was an action brought by the owners of the *Insulana* and also by the underwriters, who paid certain claims under policies upon the ship. Therefore it seems to me impossible to say, looking at the form of the judgment itself, that it was any more than a personal action—a judgment against the defendants personally for the payment of a specific sum of money. But before this writ was issued an application was made to the Judge of the Admiralty Division for liberty to issue the writ, and to proceed to arrest the vessel, and an affidavit was then made, which I am willing to accept was made in ignorance of the true state of the case, alleging that the action commenced in the Portuguese Courts had been proceedings *in rem*, as far as regards the ship. The defendants never seem to be aware that this was not the case until after the matter had been disposed of by the Judge of the Admiralty Division, when an application was made to him to set aside the writ. He proceeded, as I read his judgment, entirely on the footing that the proceedings in Portugal had been proceedings *in rem*. For reasons that have been assigned by the Master of the Rolls, which it is unnecessary for me

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to repeat, it appears to me that there is no question but that the proceedings in the Tribunal of Commerce in Portugal were entirely personal proceedings—proceedings *in personam*. No doubt proceedings of a different character were commenced in the Civil Tribunal of Portugal. Those proceedings preceded the judgment of the Tribunal of Commerce. In the first instance, in the Civil Tribunal an embargo was obtained by the plaintiffs in the present action to arrest the ship, and the ship was only released by giving security. But those proceedings were made the subject of an appeal in the Supreme Court of Lisbon, and ultimately the decision of the Court of First Instance was reversed, and on the two grounds to which reference has already been made. One was, that it was not within the ordinary jurisdiction of the Tribunal of Commerce to grant an embargo unless it were established that the ship was to blame, so far differing from the English Court of Admiralty, in which, where the matter is in doubt, the ship may be arrested and security given if it is allowed to go; but in Portugal it is not the law, while there is a doubt, to do so, and it is so put in the language of the Supreme Court. The second ground for discharging the embargo I must confess appears to be one more difficult to understand. Whatever might be the effect of that particular reason, which can be only well understood by an examination of the particular article of the code to which reference has been made, one thing is clear, that there were proceedings that could have been taken in the Civil Tribunal in Lisbon by which the arrest of the ship could be obtained, and this would be a proceeding *in rem* according to my view. The attempt was made but failed—and it could not be done except after proof that the *City of Mecca* was alone to blame—probably for the best reason, that the ship was no longer within the jurisdiction, and it would therefore be useless even if such proceedings were instituted. I am at a loss to understand on what grounds, now that we have got these facts which were not before Sir Robert Phillimore, it could be established otherwise than that the proceeding was *in personam*, and was

not a proceeding *in rem*. One argument I do not desire to pass over which was addressed to us by Mr. Gainsford Bruce. It was a bold one, and it was this—that in an action on a foreign judgment the English Court of Admiralty will proceed *in rem* wherever the foreign tribunal has established a maritime lien; but that is different to saying that they were proceedings *in rem*. Mr. Bruce was unable to produce any authority, nor do I think any can be found, for the proposition he advanced. It appears to me that the general proceedings were initiated under a mistake, and that the appeal should be allowed. I think it was well put by Mr. Benjamin in the opening that there were two modes by which they might have proceeded as he described.

LUSH, L.J.—The question which we have to decide, apart from all technicality, is whether the arrest of the vessel was a wrongful arrest on the proceedings out of the Court of Admiralty. That depends, I think, on whether the proceedings in the Court of Portugal were proceedings *in rem*. It is part of the law of nations that Courts of Admiralty in different countries have the power to condemn vessels and order them to be sold for the satisfaction of a maritime lien. Maritime liens are always recognised by all civilised nations, and damage by collision is classed among that class; and had this been a judgment *in rem*—that is to say, a judgment condemning the ship and ordering the ship to be sold in order to satisfy the maritime lien—that judgment would have been recognised in this country and every other civilised country; and it is most important that proceedings under which the sale of a vessel takes place should shew on the face of them the authority why that property is to be diverted from the owner, because the title to purchase is recognised by all nations, but the title depends on the circumstances under which the sale takes place. It is, therefore, important that the judgment should shew on the face of it that the proceedings against the vessel are not merely against the owners, as such, or the captain, but that the proceedings have in contemplation a judgment ordering the

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sale of the ship, and the ultimate sale of the ship; and if it does not appear on the face of the proceedings, then the title of the purchaser has nothing to support it. It is therefore not a mere matter of form, but a matter of substance, that the judgment under which the sale is attempted to be justified should appear on the face of the proceedings. Now upon the face of this judgment there is not a word about the ship from beginning to end. It is well known that the owner of a vessel which has suffered by collision with another has two remedies. He may bring an action against the captain or owner of the other vessel and recover damages; or may sue in the Court of Admiralty and make the ship pay—one or the other. It has been said before us here that the Court of Admiralty has been abolished in Portugal, and its jurisdiction has been transferred to a Court of Commerce, and that there is no power now in that country to institute what are called actions *in rem*. That is what I collect from these proceedings. Whether this is so or not seems to me immaterial. There certainly is a proceeding by which a vessel can be laid under embargo—that is, arrested—if an action is brought against the captain in order to secure payment by lien perhaps of ultimate damages, but whether that can be carried out to proceedings *in rem* I do not know, nor does it strike me to be material. But what is material in considering the nature of proceedings claiming damages alone, is that there is nothing about the ship from the beginning to the end, as I have said. The judgment of the Portuguese Court is based upon article 1567 of the Commercial Code, which says, "In the event of a vessel being run into by another, through the fault of the captain or of the men composing his crew, the entire damage occasioned to the collided vessel and her cargo must be borne by the captain of the ship which causes it;" and further on they say, "Consequently the disposition of article 1567 of the Commercial Code, which ordains that in the event of a collision through the fault of the captain or crew the entire damage must be borne by the captain of the ship causing such damage, is entirely applicable

to the defendant Robert David Anderson, the captain of the *City of Mecca*, or the defendants, the owners of the *City of Mecca*, and they are bound collectively, according to what is laid down in article 1339 of the said Code." The action being brought against the captain and owners it is also brought against the consignees, and they give some special judgment in reference to the consignees which I need not read, and they quote the two articles giving judgment against the captain and giving judgment against the owners of the vessel. Then the judgment proceeds, and the Judge says, "I adjudge the said action to be well founded and proved, the counter charges unfounded and not proved, and in conformity thereto I condemn the defendant David Anderson and George Smith, and owners, jointly and severally, to pay to the plaintiffs the amount claimed, with interest from the date of disbursement, and I do also condemn them to pay the legal penalty both in respect of the petition in the libel and of the petition in the counter charges;" and so on. There is not a word about condemning the ship, nor do I see how they could condemn the ship. The ship had been improperly arrested in the first instance, because it was found by the Supreme Court that the plaintiff in the action had not performed the conditions by which alone an embargo could be laid on the vessel; that is to say, it was not proved to the satisfaction of the Court that the fault of the collision was entirely due to the *City of Mecca*, and therefore the Court discharged the vessel from the arrest, and the vessel went away. I do not see how it was possible for them to carry out and execute a maritime lien when they had not possession of the thing. The vessel was away in England, I believe. It was an English vessel, and it naturally left the Portuguese Court; and under the decree of that Court, if a purchaser were bound to prove his title he could not quote a single word of this judgment or any judgment in the world that would justify a sale of that ship. It is a judgment purporting to be a judgment against the persons of the captain and owners, and if they ever find them within their jurisdiction they may execute,

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according to the process they have at their command, the judgment against them individually. But as to the judgment against the ship, I doubt, if the ship were found there now, whether they could do it. But even if they found the ship there, and they could without further process seize the ship and sell it in satisfaction, that would not make this to be a judgment *in rem* which any Court in this country could be called on to execute. For these reasons I am of opinion that the action is entirely unjustified, and inasmuch as it is not merely the issuing of the writ, but inasmuch as the vessel has been arrested, and thereby the owners of the vessel have been deprived of the right of having full command of the vessel, I think we are well warranted in coming to the unanimous conclusion that the proceedings were wrong, and in not waiting for the further development of the matter by further litigation, but in saying at once that the proceedings ought to be set aside.

BAGGALLAY, L.J.—I think I ought to express my entire adoption of the definition of proceedings *in rem* and *in personam*, as quoted by the Master of the Rolls in the case of *The Bold Buccleugh* (2), but I think there is one additional passage that should be read, namely, "This claim or privilege travels with the thing into whose soever possession it may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process by a proceeding *in rem*, relates back to the period when it first attached."

Appeal accordingly allowed with costs.

Solicitors—Gellatly, Son & Warton, for appellants; Pritchard & Sons, for respondents.

ADMIRALTY. }
1881. }
May 10, 11. }

THE LEON.

Collision — Liability of Owners of a Foreign Ship—Lex Fori—General Maritime Law.

The liability of foreign owners sued in a British Court in respect of a collision on the high seas is governed by general maritime law, which is administered in such Court, and not by the lex loci of the country under the flag of which the ship is sailing. Therefore the allegation that by Spanish law the owners of a ship were not personally liable for the default (if any) of the master and crew of such ship,—Held, on demurrer, not to be a valid ground of defence.

This was an action for damage by collision, which took place on the 6th of January, 1881, between the plaintiffs' ship the *Harelda* and the *Leon*, whereby the *Harelda* received severe injuries and the *Leon* was sunk, and was brought *in personam* against Messrs. Olano, Laringa & Co., the owners of the latter vessel. In the statement of defence it was alleged *inter alia* that the defendants, the owners of the *Leon*, were Spanish subjects, though they had a house for business purposes in Liverpool; and by the 10th paragraph of the defence it was pleaded that if the collision had been caused by the negligence of the master and crew of the *Leon*, which the defendants denied, by Spanish law the owners of a ship were not personally liable for the default of the master and crew, and that therefore the defendants were not liable in the present action. To this paragraph the plaintiffs demurred, and the demurrer now came on for hearing.

Benjamin (Myburgh with him) argued in support of the demurrer.—This was a collision on the high seas, and the case is governed by general maritime law, and therefore the defendants are liable. *The M. Mozham* (1) was a case of injury to real property in Spain, and does not therefore apply to this case. He also referred

(1) 46 Law J. Rep. P., D. & A. 17; Law Rep. 1 P. D. 107.

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to *The Saxonia* (2) and *The Zollverein* (3).

Webster (with him Clarkson), for the defendants, contended that there was no general maritime law applicable to this case, and that a Spanish ship, carrying the Spanish flag, must be considered as part of the Spanish territory, so that the Spanish law would apply to the liability of the owners. He referred to *The General Steam Navigation Company v. Guillon* (4), *Lloyd v. Guibert* (5), *The Wild Ranger* (6) and *The Dundee* (7).

SIR ROBERT PHILLIMORE.—This is a case in which it appears that an English vessel was run down by a Spanish vessel on the high seas and was sunk.

The owners of the English vessel brought their action against some of the owners of the Spanish vessel resident in this country, and the defence they set up in their 10th paragraph is, that before and at the time of the said collision the *Leon* was a Spanish ship, sailing under the Spanish flag, and wholly owned by subjects of the King of Spain, and that if the said collision was occasioned by any improper or negligent navigation of the *Leon* it was wholly occasioned by the negligence of the master or mariners of the *Leon*, and not by such owners or the defendants or any of them, and that, by the law of Spain in force at the time of the happening of the said collision and now, the master and mariners of the ship, and not the owners, are liable in damages in respect of a collision occasioned, as in the statement of claim alleged, and by such law the defendants are not liable in respect of the damage proceeded for in the action. This plea is demurred to, and the question is whether the demurrer can be sustained or not. A great deal has been said upon the question of what law is applicable to this case. I agree in the existence of the general maritime law. In the few obser-

vations I shall make it is not necessary to go very abstrusely into the subject, because two cases of recent date seem to dispose of the question. In the first place it has not been denied that if the *res* had been seized in this case the liability to pay damages could not be denied. In the case of *The Druid* (8) the learned Judge (Dr. Lushington) says, "The liability of the ship and the responsibility of the owners in such cases are convertible terms: the ship is not liable if the owners are not responsible; and, *vice versa*, no responsibility can attach upon the owners if the ship is exempt and not liable to be proceeded against." In the same volume, in *The Volant* (9), Dr. Lushington says, "By the ancient maritime law the owners of a vessel doing damage were bound to make good the loss to the owners of the other vessel, although it might exceed the value of their own vessel and the freight. For the purpose of enforcing this obligation the owners of the damaged vessel might resort either to the Courts of law or to the Admiralty Court; and if they preferred the latter they had the choice of three modes of proceeding, namely, against the owners or against the master personally, or by proceeding *in rem* against the ship itself. The Court of Admiralty has jurisdiction over the whole subject-matter of damages on the high seas, and the arrest of a vessel is only one mode of proceeding." In the case of *The Johan Frederick* (10), Dr. Lushington observes, "All questions of collision are questions *communis juris*." In the case of *The Wild Ranger* (6) Dr. Lushington said, "The Court has found that *The Wild Ranger* (6), an American vessel, by improper navigation came into collision on the high seas with a British ship, and the ordinary decree has passed condemning the owners of the American vessel in the damages." In *The Zollverein* (3) Dr. Lushington says, "Generally when a collision takes place between a British and a foreign vessel on the high seas, what law shall the Court of Admiralty follow? As regards a foreign ship (for her owners cannot be supposed to know or to be

(2) Lush. 410; 31 Law J. Rep. Adm. 201.

(3) 1 Swa. 96.

(4) 11 Meo. & W. 877; 13 Law J. Rep. Exch. 168.

(5) 35 Law J. Rep. Q.B. 74; Law Rep. 1 Q.B. 115.

(6) 1 Hag. 109.

(7) Lush. 553.

(8) 1 W. Robin. 391.

(9) Ibid. 383.

(10) Ibid. 37.

The Leon, Adm.

bound by the municipal law of this country) the case must be decided by the law maritime—by those rules of navigation which usually prevail among nations navigating the seas where the collision takes place; if the foreigner comes before the tribunals of this country the remedy and form of proceeding must be according to the *lex fori*." I am of opinion, without going further into erudition connected with this question of general maritime law, that these authorities, independently of others that may be cited, are sufficient to enable the Court to pronounce that the demurrer must be sustained and with costs.

Solicitors—Stokes, Saunders & Stokes, for plaintiffs; W. W. Wynne & Son, agents for H. Forshaw & Hawkins, Liverpool, for defendants.

DIVORCE.
1881. } HALPEN (otherwise BODDING-
Feb. 8. } TON) v. BODDINGTON.
March 1. }

Suit for Nullity by Wife—Decree Nisi—Wife unwilling to proceed with Suit—Application by Husband for Decree Absolute—Application refused.

In a suit for nullity the wife obtained a decree nisi, but was unwilling to proceed further. The Court declined to make the decree absolute on the application of the respondent.

On the 10th of March, 1880, the petitioner, then calling herself Emily Caroline Boddington, filed a petition alleging that she was on the 23rd of October, 1879, lawfully married to Thomas Boddington, and praying for a restitution of conjugal rights.

The respondent filed an answer alleging divers acts of violence on the part of the petitioner, and praying for a judicial separation. The cause was set down for trial, but before the hearing the petitioner substituted for her previous petition a petition for nullity of marriage by reason of the respondent's impotence. This was accordingly done, and on the 4th of August, 1880, the petition for nullity

was heard *in camera* and a decree *nisi* of nullity pronounced. Subsequently the petitioner refused to proceed further in the matter, and on the 8th of February, 1881, applied that her petition might be dismissed, or that the decree should not be made absolute. This was opposed on behalf of the respondent, and leave was given for him to apply to make the decree absolute, but the Court directed that the Queen's Proctor should have notice of the application. The Attorney-General declined to direct an intervention, and no one else having appeared to show cause to the contrary, on the 1st of March

Inderwick (with him *Pritchard*) moved the Court on behalf of the respondent to make the decree absolute.—*Ousey v. Ousey and Atkinson* (1) does not apply. There the Court refused to make absolute a decree *nisi* for dissolution of marriage, but the Court's jurisdiction in such cases is defined by the statute which in terms gives the power only to grant the relief at the prayer of the innocent party. Here the authority is that which was inherent in the Ecclesiastical Courts. In *Norton v. Seton* (2), though the Court refused to decree a nullity of marriage at the suit of the impotent person, it refused upon other grounds than that he was the complainant. In cases of consanguinity, affinity or bigamy, though the wrongdoer seeks the aid of the Court, and great hardship is often inflicted, the Court nevertheless annuls the marriage—*Miles v. Chilton* (3).

Bayford, contra.—The language of the statute, 36 Vict. c. 31, puts decrees *nisi* for dissolution of marriage and decrees *nisi* for nullity of marriage upon the same footing, and therefore *Ousey v. Ousey and Atkinson* (1) is directly applicable. The distinction between void and voidable marriages is clearly explained by Lord Penzance in *A. v. B.* (4), and governs this case. He also cited *Hincks v. Harris* (5).

Inderwick, in reply.

(1) 43 Law J. Rep. Prob. & M. 35; Law Rep. 3 P. & D. 223.

(2) 3 Phill. 147.

(3) 1 Robert. 684.

(4) Law Rep. 1 P. & D. 559.

(5) 2 Mod. 182.

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THE PRESIDENT (SIR JAMES HANNEN) said—I am not called upon to express an opinion upon the very difficult question which has been argued before me, namely, whether or not a suit can be instituted for a decree of nullity of marriage by the husband in whom the defect is alleged to exist. That may be properly raised before me in a suit for that purpose, but it is not necessary for me to give an opinion upon it now, because I am clearly of opinion that the respondent is not entitled to have the decree made absolute in the circumstances which exist in this case. I have already pointed out that by his pleadings he has denied the complaint that was made by his wife against him, and he has himself concluded with a prayer for judicial separation, which, of course, is based upon the assumption that there is an existing marriage. That is how the pleadings stand. His wife, who was the complaining party, whose claim he has all along resisted, obtained a decision in her favour; but before the operative decree of the Court had been pronounced she desired to discontinue the further proceeding in the case, and the respondent, who, as I have said, has up to this time always resisted her claim, now comes forward and asks the Court not to grant her prayer, but to make the order which she originally asked for, but which she now withdraws from asking. That, as I have said, is contrary to all precedent. I am not aware of any case in which the defendant in a suit has been allowed, because it suited his purpose, to ask that a decree should be made against him. In this particular matter I have already gone at considerable length, in the case of *Ousey v. Ousey and Atkinson* (1), into the reasons which led my mind to the conclusion that in ordinary suits for dissolution of marriage the respondent cannot call upon the Court to pronounce a decree upon the petitioner ceasing to desire it; and I am of opinion that the principle of that case governs the present. The decree *nisi* in suits for nullity has been interposed between the hearing of the cause and the final decree in precisely the same manner as it exists in suits for dissolution. It seems to me that the pronouncing the decree absolute is as

much a final step in the matter in the one case as in the other, and it is, therefore, competent for the petitioner before that final step in the cause has been taken to withdraw from the suit, and say, "I no longer require that the Court shall give me that relief for which I formerly asked." That works no injustice. It enables the respondent to have all the advantage which he could have had in the original suit. He is entitled to have the petition dismissed for want of prosecution; he is entitled to put an end to any obligation imposed upon him in the course of the suit in the shape of an order for alimony or whatever else it may be, and, of course, he will be entitled to make any application which he may be advised to make on the subject of costs. In all this he is in no way damnified by being limited to asking that the petition may be dismissed, while at the same time it leaves it open to him, if he should be so advised, to institute a separate suit for a decree of nullity of marriage upon the grounds which have been brought forward in the case. All I say now is that this application on the part of the respondent that the decree *nisi* be made absolute must be dismissed.

On the 5th of April the decree was made absolute on the application of the petitioner.

Solicitors—Lewis & Lewis, for petitioner; Sandilands, Humphry & Armstrong, for respondent.

DIVORCE.

1881.

March 8.

MOHRALL v. MOHRALL.

Deed of Separation—Allowance secured to Wife—Covenant not to sue for Maintenance—After Separation Husband guilty of Incestuous Adultery—Wife entitled to usual Order for permanent Maintenance.

The wife, under a deed of separation, agreed to accept a certain sum as a provision for her support, and covenanted not to sue her husband for any further maintenance. After their separation she discovered that her husband had been guilty

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of incestuous adultery, and she obtained a decree for dissolution of marriage on that ground:—Held, that she was not precluded by the deed from claiming to have the usual order for permanent maintenance made in her favour.

This case came before the Court on an application for a further and fuller answer as to his means by the respondent husband.

The petitioner and respondent were married at Utica, in the State of New York, in the United States of America, on the 13th of August, 1853. Shortly after their marriage, of which there was no issue, they returned to England, and took up their residence at Ashwood Bank, in the county of Worcester, where the respondent carried on the business of a needle reducer. They parted in August, 1879, and on the 10th of November, 1880, the Court pronounced a decree *nisi* for dissolution of their marriage, on the ground of the respondent's incestuous adultery.

On the 10th of December, 1880, the petitioner presented a petition for permanent maintenance. It alleged that the respondent derived a net annual income of about 500*l.* a year from his business, and that he was also possessed of realised property, money at his banker's and other sources of income.

The respondent in his affidavit stated that he and the petitioner had been living separate and apart since the 1st of August, 1879, by mutual consent, and that at that date a deed of separation had been executed, by which he had agreed to secure to her the sum of 30*l.* a year, and to assign to her a sum of 130*l.*, besides certain goods and chattels; and that the deed contained, amongst other covenants, the following, namely, "That the said Sarah Morrall, or any person on her behalf, shall not, nor will at any time hereafter, commence or prosecute any suit or other proceeding for compelling the said Edward Morrall to allow her any support, maintenance or alimony whatsoever, except the yearly sum hereinbefore covenanted to be paid to her; . . . and the production of these presents shall be a bar

to any action or suit or other proceeding in respect thereof." The affidavit further alleged that the provisions of the deed had been carried out and observed, that for further security the respondent had executed a deed of trust, charging certain shares in the Dudley Gas, Coal and Coke Company, with the payments of the said 30*l.* per annum, and that under the circumstances no order ought to be made, and that he ought not to be required to answer further in the matter.

The affidavit of the petitioner in reply stated that the deed of separation was prepared by the respondent's solicitor; that she had remonstrated at the small amount proposed to be given to her, and was unwilling to sign the deed, but the respondent had threatened that if she did not she should have nothing, and that he would go to America; that she had no one to advise her; and that she had not discovered until after the 31st of January, 1880, and after the execution of the deed, that the respondent had been guilty of incestuous adultery.

A summons was issued calling on the respondent to shew cause why he should not file a further and better answer. The summons came before the President in chambers on the 1st of February, and was adjourned into Court for argument.

C. A. Middleton, for the petitioner, in support of the application.—The extent to which a wife is bound by such a deed is explained in *Williams v. Baily* (1), in which case the Court refused to restrain her. In *Powell v. Powell* (2) the wife was the guilty party. *Benyon v. Benyon* (3) is a direct authority for the application. *Marshall v. Marshall* (4) was a suit for conjugal rights.

Bayford, for the respondent.—The allowance under the deed was agreed to by the wife after considering what was necessary for her support, and the suit does not alter that state of things—

(1) Law Rep. 2 Eq. 731.

(2) 43 Law J. Rep. Prob. & M. 9; Law Rep. 3 P. & D. 186.

(3) Law Rep. 1 P. & D. 447.

(4) 48 Law J. Rep. P. D., & A. 49; Law Rep. 5 P. D. 19.

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George v. George (5), *Weber v. Weber* (6). In *Williams v. Baily* (1) the wife had not accepted the deed; if she had she would have been restrained.

THE PRESIDENT (SIR JAMES HANNEN).—The state of facts as proved to exist in this case was not in the contemplation of the parties when they entered into this agreement. The petitioner agreed to live separate and apart from her husband upon the ground that there had been differences between them. No one will consider that that was a licence to her husband to commit adultery, incestuous or not. It was an agreement to live apart, and while that state of things, under which the agreement was made, continued she was entitled to receive no more than the stipulated sum. But when she has established that her husband has been guilty of incestuous adultery—when she has established that a state of things exists which was not in contemplation when the deed was executed, and that a wrong of this kind has been done to her—it is obvious that she is in no way restrained by the deed from prosecuting the claim to which she would otherwise be entitled; and I hold that when the circumstances justified her in bringing a suit for dissolution of marriage after an agreement of this kind, she was entitled to all the incidents of that suit—amongst the rest, to an allowance based upon her husband's actual income, and not limited to the sum which she had previously agreed to accept. I therefore order that the respondent file a further and fuller answer.

Solicitors—Surr, Gribble & Bunton, agents for New, Prance & Co., Evesham, for petitioner; Rixons, agents for E. Browning, Redditch, for respondent.

DIVORCE. }
1881. } *Ex parte BRUCE.*
March 15. }

Practice—Petition for Divorce—Petitioner in India—Affidavit verifying Petition sworn by Solicitor.

The petitioner in a divorce suit was on military service in India and unable to make before a duly constituted authority the usual affidavit verifying the petition. The Court, under the circumstances, allowed the petition to be verified by the affidavit of the solicitor, but ordered that the petitioner's affidavit should also be filed before the hearing.

This was a petition by a husband for dissolution of marriage.

It appeared from the affidavit of his solicitor that the petitioner was a surgeon-major in Her Majesty's Bombay Army, and was with the Afghanistan field force stationed near Candahar, and that there was no person in or near that place before whom the usual affidavit accompanying the petition could be sworn, the nearest official being at Kurrachee, several days' journey from Candahar, and that the petitioner could not obtain leave of absence to go there.

Bayford, for the petitioner, moved the Court to allow the petition to be filed on being verified by the affidavit of the petitioner's solicitor.

THE PRESIDENT (SIR JAMES HANNEN).—The petition may be presented if verified by the affidavit of the solicitor, but the usual affidavit by the petitioner must also be supplied before the hearing.

Solicitors—Hollams, Son & Coward, for petitioner.

(5) 38 Law J. Rep. Prob. & M. 34; Law Rep. 1 P. & D. 564.

(6) 1 Sw. & Tr. 219; 28 Law J. Rep. Prob. & M. 11.

ADMIRALTY.

1881.

March 27.

April 5.

THE ETTRICK.

Salvage—Collision—Limitation of Liability—Liability of Owners of Wrong-doing Ship for Charges of raising Sunken Cargo—Removals of Wreck Act, 1877 (40 & 41 Vict. c. 16), s. 4.

When a ship which is to blame for a collision is sunk in consequence of it, the owners thereof are not entitled to obtain from the owners of the cargo laden on board the cost of salvaging it by raising it. When the Thames Conservancy raises a ship and cargo, sunk by collision, under the authority of the Removals of Wreck Act, 1877 (40 & 41 Vict. c. 16), s. 4, the shipowner is not entitled to recover from the cargo-owner any proportion of the cost incurred in raising the cargo, even if he has limited his liability in respect of damage by the collision.

Phillimore appeared for the plaintiff, the owner of the *Ettrick*.

Myburgh and Stubbs, for the defendant, the owner of the cargo lately laden on board the *Ettrick*.

The facts and questions which arose thereon are set out fully in the judgment.

SIR R. J. PHILLIMORE.—This is a Special Case, which the plaintiff and defendant have concurred in stating, pursuant to the Judicature Act, 1875, Order XXXIV. The steamship *Ettrick* came into collision in Gravesend Reach with the steamship *St. Petersburg*, and the *Ettrick* sank with all her cargo. The *Ettrick* admitted that she was alone to blame for this collision, and claimed in the usual way to limit her responsibility to 8*l.* per ton of her registered tonnage. This sum was found to amount to 1,972*l.* 6*s.* 6*d.*, with some interest, and was paid into Court. Enquiries were made to ascertain the persons entitled to claim upon this sum. It appeared that Dr. Wendt was entitled to claim in respect of 293 bales of wool, part of the cargo, and he has made his claim accordingly. Shortly after the collision the Thames Conservancy, by virtue of

certain statutory powers, raised the *Ettrick*, with the principal part of her cargo, including these bales of wool, and upon an undertaking given by the owner of the *Ettrick*, who is the plaintiff in the liability action, to pay the costs of raising the vessel, she and her cargo, in a damaged condition, were given up to him. Dr. Wendt applied to him for the immediate delivery of his bales of wool, and on Dr. Wendt's giving an undertaking to pay the freight and all charges that might be legally due on the wool, he obtained possession of it. The value of the *Ettrick* when raised was 1,100*l.*; the expenses of raising the ship and cargo amounted to about 400*l.*, and these expenses were not enhanced by any expenses specially incurred for raising Dr. Wendt's bales of wool. The owner of the *Ettrick* claims from Dr. Wendt 124*l.* 15*s.* 2*d.* as the latter's proportion of the expenses of raising the ship with her cargo, and he also claims, not against the fund in Court, which alternative his counsel has abandoned, but from Dr. Wendt personally, as owner of the wool, and the questions for the opinion of the Court now are, first, whether the owner of the *Ettrick* is entitled to 124*l.* 15*s.* 2*d.*, or to any and what sum by way of general average contribution, salvage or otherwise; secondly, whether the owner of the *Ettrick* is entitled to be paid the said sum by Dr. Wendt personally. It was contended, first, on behalf of the owner of the *Ettrick*, that although, apart from the statutory limitation of his liability, he would have been liable to have paid this 124*l.* 15*s.* 2*d.*, having once paid into Court his 8*l.* per ton he is entirely purged of his liability as a wrongdoer, and stands in the position of an innocent party; and that to hold him now liable for this 124*l.* 15*s.* 2*d.* would be to make him liable by that sum in excess of the statutory limitation. In support of this position the case of *Chapman v. The Royal Netherlands Steam Navigation Company* (1) was cited. It was contended in the second place that the owner of the

(1) 48 Law J. Rep. Chanc. 449; Law Rep. 4 P. D. 157.

The Ettrick, "Adm.

Ettrick, having a right to be treated as an innocent party, was entitled to claim from Dr. Wendt the sum in dispute as a general average contribution to defray the expenses of salvage services rendered by a third person—that is to say, by the Thames Conservancy. On behalf of Dr. Wendt it was contended that the case did not turn upon the effect of the statutory limitation of liability. The owner of the *Ettrick* contracted to take the wool to Gravesend, instead of which, by the fault of his servants, it was sent with the ship to the bottom of Gravesend Reach, and it became the duty of the owner to raise the vessel, the expenses of doing which it is admitted were not enhanced by raising also the bales of wool. This duty was imposed upon the owner either by the Thames Conservancy Act, B, 1857 (a private Act) (20 & 21 Vict.), or by the Removal of Wrecks Act, 1877 (40 & 41 Vict. c. 16), s. 4 (2), or by both. It was contended that if the Conservancy authorities had, as it was competent for them to have done, sold the ship, it would have produced ample funds to defray the costs of raising, and there would have been no charge on Dr. Wendt's cargo. I must here observe that the 6th section prescribes that the proceeds of sale arising from ship and cargo shall be regarded as a common fund. As a matter of fact, however, the ship and cargo having been delivered up by the Thames Conservancy to the plaintiff the 6th section never came into operation. The cargo, it is to be observed, was given

up by the plaintiff to Dr. Wendt in order to get the freight, and an undertaking to pay the freight was given. It was also contended on behalf of Dr. Wendt that if the owner of the *Ettrick* had himself salvaged the property he could not have claimed salvage, and that he could not do so now that some one else had salvaged it. In support of this three cases were cited—*Schloss v. Heriot* (3), where the plaintiff was a shipowner, and his actionable negligence was held to be a bar to claims for general average to contribute to losses caused by such negligence. The cargo *Ex Capella* (4), in which Dr. Lushington says, "The question for me to determine is, whether when a collision has taken place between two vessels, and both vessels are held to blame, one of them can sue for salvage for having saved the cargo of the other from the perils consequent on the collision. I don't seek for authorities but I look to the principle which ought to govern the case. In my mind the principle is this, that a man cannot profit by his own wrong. This is a rule founded in justice and equity, and carried out in various ways by the tribunals of this country, and has never, so far as I am aware, been departed from by any English Court. The application of this rule to the present case is obvious. The asserted salvors were the original wrongdoers; it was by their fault that the property was placed in jeopardy. The rule would bar any claims by them for services rendered to the other ship which was a co-delinquent in the collision; but the present claim, it is to be observed, is a demand for salvage against the cargo, the owners of which were perfectly innocent." *The Norway* (5) was also cited, but in this case the facts were very complicated, and portions of the judgment of the Admiralty Court were reversed on appeal; and although I see no reason to question the soundness of the principles of law laid down by Dr. Lushington with respect to the responsibility of a shipowner for cargo jettisoned in consequence of the negligence of his servant, I do not rely on that case.

(3) 14 Com. B. Rep. N.S. 59; 32 Law J. Rep. C.P. 211.

(4) Law Rep. 1 A. & E. 356.

(5) Br. & L. 377; on appeal, *ibid.* 404.

(2) 40 & 41 Vict. c. 16. s. 4: "When any vessel is sunk, stranded or abandoned in any harbour or tidal water under the jurisdiction of a harbour or conservancy authority, or in or near any approach thereto, in such manner as, in the opinion of the authority, to be or likely to become an obstruction or damage to navigation in that harbour or water, or in any approach thereto, the authority may take possession of and raise, remove or destroy the whole or any part of the vessel, and may light or buoy any such vessel or part until the raising, removal or destruction thereof, and may sell in such manner as they think fit any vessel or part so raised or removed, and also any other property recovered in the exercise of their powers under this Act, and may out of the proceeds of such sale reimburse themselves for the expenses incurred by them under this Act, and shall hold the surplus (if any) of such proceeds in trust for the person entitled thereto."

The Ettrick, Adm.

It was further strenuously denied that there was really any salvage property so called, but simply the performance of a duty under one or both of the two statutes before mentioned, and if there were no salvage there could be no general average, and if there were no general average, then no lien attached to the wool; and the case of *Schuster v. Fletcher* (6) was relied on in that case. It was said, "The shipowner had an interest in getting the ship off and bringing the cargo into port in order that he might earn his freight. . . . A great deal of what he has done was in performance of his own contract. He was bound to use every effort to convey the cargo safely to its destination, and could only give up the task when it was hopeless." These observations appear to me applicable to the present case. If the contention of the owners of the *Ettrick* was well founded, the result substantially would be that he, having broken his contract by damaging the cargo and not bringing it to the port of destination, and having limited his liability for this wrong, would be entitled nevertheless to a pecuniary contribution from the cargo towards defraying the expenses incident to raising the ship in which the cargo was. Thus the cargo-owner would suffer a double injury—first, by limitation of the wrongdoer's liability, which debars him from a *restitutio in integrum*; and, secondly, by compelling him to pay a portion of the cost of repairing the mischief caused by the wrong. At this manifestly inequitable conclusion the Court would arrive with great reluctance. In my judgment, however, there was no salvage service, properly so called, but simply performance of a prescribed duty; and if there was a salvage service the limitation of the owner's liability would not entitle him to demand from Dr. Wendt any contribution to it. Upon the whole, and after careful consideration of the argument and the cases relied upon, I am of opinion that the owner of the *Ettrick* is not entitled to the sum of 124*l.* 15*s.* 2*d.* or to any sum by way of general average, and that he is not entitled

to be paid this or any other sum by Dr. Wendt personally. I pronounce, therefore, in favour of Dr. Wendt, and I condemn the plaintiff in the costs of this Special Case.

Solicitors—Ingledew & Ince, for plaintiff; Stokes, Saunders & Stokes, for defendant.

[IN THE COURT OF APPEAL.]

ADMIRALTY. }

1881.

March 23. }

THE MARGARET.*

Collision—Infringement of Thames Conservancy Rules—Damages—Contributory Negligence—Cause of Action.

A dumb barge by the negligent navigation of those on board came into contact with a schooner moored at anchor in a proper place in the river Thames. The schooner had her anchor hanging over her bow with the stock above water, contrary to the 20th by-law of the Thames Conservancy Rules. The anchor made a hole in the barge, and caused damage to her cargo. But for the improper position of the anchor neither the barge nor her cargo would have received any damage:—Held, that the owners of the barge could maintain an action of damage against the schooner; but that, as there had been contributory negligence on the part of those on the barge, the plaintiffs were only entitled to half the damage sustained.

This was appeal from a decision of Sir R. J. Phillimore, reported *Ante*, p. 3.

Butt and Raikes, for the appellants, the plaintiffs in the action.—The schooner sustained no damage at all, and the evidence shews that if her anchor stock had been awash the flue of the anchor would not have touched the barge, but would have gone under it. Therefore it was the schooner's negligence which caused the collision and the whole of the injury,

(6) 47 Law J. Rep. Q.B. 530; Law Rep. 3 Q.B. D. 418.

* *Coram* James, L.J.; Brett, L.J.; and Cotton, L.J.

The Margaret (App.), Alm.

and therefore she is liable in damages; and the penalty imposed for infringement of the Thames Conservancy Rules is no bar to our claim for damages. We do not deny that there was some negligence on our part, but, if the anchor had not been there, no damage would have been caused to either vessel by the collision. A man may be a trespasser on the land of another and yet bring an action for damages arising to him there, if the cause of the injury is improperly there—*Barnes v. Ward* (1). Here, admitting the barge was unlawfully where she was, *qua* trespasser, the anchor was improperly there, and first contributed to the cause of action. At any rate, assuming there was negligence on both sides, we are entitled to half the damage sustained.

The cases of *The Gipsy King* (2), *Sills v. Browne* (3) really do not throw any light upon this case.

Milward and Clarkson, for the respondent.

[JAMES, L.J.—We have no doubt that the barge was negligently navigated.]

Then we submit that that negligence was the whole real cause of the collision, and that we are not liable for the injury which resulted from that collision.

The Gipsy King (2) is really an authority in our favour. The collision must have preceded the penetration of the anchor, and the damage was the necessary result of the collision. The collision, therefore, was the primary cause of the damage, and the negligent steering of the barge was the cause of the collision. The plaintiffs, therefore, substantially contributed to the occurrence of the injury.

Butt, in reply.

JAMES, L.J.—It appears to me that we must consider in this case what is the cause of action. The action is by the barge, who say, "Your anchor was in an improper place, and by its being so placed negligently, my barge came into contact with it. It made a hole in her,

and did a great deal of damage." That is the cause of action. The damage was done immediately by the contact of the improperly placed anchor with the barge. Is it a conclusive answer to say, "True it is I had my anchor improperly placed; true it is it came into contact with your barge; and true it is that if the anchor had not been there no damage would have been done. But you are the person who led to the wrong, because, if your barge had not been improperly navigated, the collision would not have happened, and the damage would not have occurred; and therefore it was you who caused the damage"? It appears to me that that plea cannot be justified. There is no contributory negligence, unless it leads substantially to the cause of action. This is simply a case in which both parties are equally to blame, because both parties through their own fault caused the damage. Therefore, according to the Admiralty rule, the damage is equally divided between the parties.

BRETT, L.J.—It seems to me that it is the duty of the Court of Admiralty to determine what is the legal liability of the litigant parties, and in order to do that the Court at the hearing must deal with the cause of action, and must determine whether there is any liability on the part of the defendants with regard to the cause of action, and, if so, what the legal character of that liability is. Now the cause of action in collision cases is not merely the fact of the ships having come into impact with one another, for that is by itself no cause of action, but there must be also damage, in the sense of injury, caused to the property of the plaintiffs by reason of the collision. Therefore, even if there be no contributory negligence charged against the plaintiffs, it is not sufficient for the Court to find that there was a collision in point of fact, and that that collision was caused by the negligence of the defendants. There is no cause of action established by that. In 999 cases out of 1,000 that is sufficient, because there has been some damage done; but in order to establish a cause of action the Court must find not only that there was a collision, and that it was

(1) 9 Com. B. Rep. N.S. 392; 19 Law J. Rep. C.P. 105.

(2) 2 W. Robin. 538; 5 Notes of Cas. 284.

(3) 9 Car. & P. 601.

The Margaret (App.), Adm.

the result of the negligence of the defendants, but that some damage was done. Then the liability of the defendants is made out—and the cause of action is established. But if it be asserted that the plaintiff was guilty of contributory negligence, then, what is contributory negligence? To my mind, strictly stated, it is whether the plaintiff has by negligence of his own contributed to the injury, which is the cause of action, and not merely to the collision. Here you have the fact that the collision is caused by the negligence of those on the barge, and I cannot see myself that the fact of the impact was assisted by anything done on the part of the schooner; but there would have been no damage at all, and no cause of action at all, but for the fact of the anchor being improperly placed, which was a wrongful act. The schooner was therefore to blame in a matter which contributed to the injury to the barge, and, had not the barge been at all to blame, the schooner would have been liable to the whole of the damage. But the barge was to blame for negligence, and by reason of such negligence on her part she came into contact with the anchor. The barge and the schooner both were wrong in matters contributing to the injury which is a material part of the cause of action, and, according to the rule of the Court of Admiralty, the damages ought to be divided.

COTTON, L.J.—I have come to the same conclusion. The ground of the plaintiff's claim is that the anchor of the schooner was out of bounds; but the plaintiffs themselves were in fault in navigating their barge negligently. The result is that the ordinary Admiralty rule is applicable, and the damages ought to be divided between the parties.

Solicitors—Cattarns, Jehu & Hughes, for plaintiffs; J. T. Davies, for defendants.

PROBATE. }
1881.
March 22. }

CLERKE v. CLERKE.

Will—Feme Covert Executrix—Refusal of Husband to assent to Probate—Grant to Nominee of Wife under Section 73 of 20 & 21 Vict. c. 77.

A married woman was appointed sole executrix of a will and universal legatee. Her husband objected to her taking probate, and the Court, under section 73 of 20 & 21 Vict. c. 77, made the grant to her attorney.

Quære, whether a husband has an absolute right to object to his wife taking probate of a will to which she has been appointed executrix.

Hannah Noble Walden, late of Newington, in the county of Surrey, widow, deceased, died on the 29th of May, 1880. The deceased made her will on the 20th day of May, 1880, and therein named the plaintiff, Mary Ann Clerke, universal legatee to her separate use, and appointed her sole executrix. The value of the deceased's estate was about 49*l.*, and her debts amounted to about 46*l.* The defendant, Charles Frederick Clerke, as husband of the plaintiff, entered a *caveat* against proof of the will.

Powles, for the plaintiff, moved the Court to order the contentious proceedings to be discontinued, and that probate of the will might be granted notwithstanding the dissent of the husband. The parties had lived apart for seventeen years, and the husband had no interest in the property.

Searle, for the defendant.—The husband fears that the plaintiff will take possession of the property and leave him to pay the debts. He insists upon his right, namely, that a wife cannot take probate against her husband's consent.

[THE PRESIDENT.—It has not been the practice in the registry to require proof of the husband's consent.]

The law is clearly in favour of the husband's right to prevent her from taking the grant—*Pemberton v. McGill*, cited in *Coote's Practice* (8th ed.), p. 51; *Williams on Executors* (8th ed.), pp. 236, 456, 967;

Clerke v. Clerke, Prob.

Bubbers v. Hurby (1). He would be liable for her *devastavit*—*Williams on Executors* (8th ed.), 1844. The case of *Pemberton v. Chapman* (2) was also cited.

[THE PRESIDENT.—But suppose the estate were large, and the husband's conduct merely vexatious, could he by his refusal deprive her of the benefits given her by the will?]

The grant might go to her nominee, who would have to give security for the due performance of his duties.

Powles thereupon asked for the grant to her attorney under section 73 of 20 & 21 Vict. c. 77.

THE PRESIDENT (SIR JAMES HANNEN).—I think that is the best solution of the difficulty. The grant may be made to the attorney of the plaintiff, she being willing but not competent to take probate.

Solicitors—E. Dow & Co., for plaintiff; H. F. & E. Chester, for defendant.

PROBATE. }
1881. } *In the goods of WILLIAM*
March 22. } *HAMMOND (deceased).*

Administration—38 Geo. 3. c. 87. s. 1—21 & 22 Vict. c. 95. s. 18—*Assignee in Bankruptcy—Creditor—Administrator out of Jurisdiction.*

An assignee in bankruptcy of an administrator who is out of the jurisdiction is a creditor within the meaning of 38 Geo. 3. c. 87. s. 1 and 21 & 22 Vict. c. 95. s. 18, and as such may obtain administration de bonis non to the intestate limited to the fund to which the assignee is entitled.

William Hammond, formerly of Scott's Yard, Bush Lane, in the city of London, deceased, died on the 2nd day of June, 1857, a widower, and intestate.

Letters of administration of his personal estate and effects were granted on the 18th of September, 1857, to his son William Parker Hammond as his only

child and sole next-of-kin, and only person entitled in distribution to such estate.

William Parker Hammond had previously—namely, on the 9th of March, 1855—been duly adjudicated a bankrupt, and was at the time of his father's death indebted to his father's estate in the sum of 2,250*l.*, and after having obtained the letters of administration to his father's estate, was admitted (as such administrator) as a creditor of his own estate under the bankruptcy. Before his father's death he obtained his certificate of discharge under the first bankruptcy, and was again, on the 12th of October, 1867, adjudicated a bankrupt, and Mr. Thomas Brooke was appointed creditors' assignee.

In the month of November, 1867, William P. Hammond absconded, and though numerous enquiries were instituted, he has never since been heard of.

A sum of 506*l.* 5*s.* was now due to the estate of William Hammond, being a dividend payable to that estate under the second bankruptcy of William P. Hammond.

Searle, for Mr. Thomas Brooke, the assignee, moved the Court for a grant of letters of administration *de bonis non* of William Hammond. By the statute 38 Geo. 3, if an executor to whom probate has been granted is resident out of the jurisdiction, the Court may grant administration to a creditor, next-of-kin, or legatee, for the purpose of proceedings in Chancery, and by the statute 21 & 22 Vict. c. 95. s. 18, the provisions of the former Act are extended to all executors and administrators, whether proceedings in Chancery are intended or not. Under these Acts a grant has been made to the representative of a legatee—*In the goods of Collins* (1); and to a trustee substituted by the Court of Chancery for an executor who had gone abroad—*In the goods of Hampson* (2); to a residuary legatee—*In the goods of Ruddy* (3); and to a creditor where the executor of the executor is abroad—*In the goods of Grant* (4).

(1) 2 Sw. & Tr. 444.

(2) 35 Law J. Rep. Prob. & M. 1.

(3) Law Rep. 2 P. & D. 330.

(4) 38 Law J. Rep. Prob. & M. 55; Law Rep. 1 P. & D. 436.

(1) 3 Curt. 50.

(2) 7 E. & B. 210; (Exch. Ch.) E., B. & E. 1066.

In the goods of Hammond, Prob.

THE PRESIDENT (SIR JAMES HANNEN).—I am of opinion that a grant to the estate of William Hammond, deceased, may be made to Mr. Brooke as a creditor in equity of the estate of the deceased.

Solicitors — Linklater, Hackwood, Addison & Brown, agents for Laycock, Dyson & Laycock, Huddersfield.

ADMIRALTY. }
1881.
April 9, 11. }

THE MAID OF KENT.

Damage — Consequential Damages — Practice of the Court.

It is not an inflexible rule of practice that all questions of damage should be referred to the Registrar and merchants. Therefore when the question of consequential damages was distinctly raised by the pleadings, and the Court, assisted by Trinity Masters, was admittedly the best tribunal to determine the issues so raised, the Court ruled that evidence with respect to such issues might be given at the hearing, and that it would itself decide them, and not refer them to the Registrar and merchants.

This was an action for damages, brought by the *Kate Covert* against the *Maid of Kent*. The action arose out of a collision which took place in Dover harbour on the 7th of February, 1881.

Butt and Clarkson, for the plaintiff.

Webster and Phillimore, for the defendant.

During the hearing of the case a point arose whether the question of consequential damages arising on the pleadings should be entertained by the Court, or referred to the Registrar and merchants.

Our. adv. vult.

SIR R. J. PHILLIMORE (on April 11).—The question which the Court has to determine is whether it is obligatory in every case of this description to send the matter to the Registrar and merchants,

with the right of an appeal, if necessary, from them to the Court. The general competency of the Court to hear and decide upon questions of this description is not and could not be denied, but the point, though not expressly raised in the pleadings, was whether, in all cases, it is the practice of the Court to send any question of consequential damages arising in a case to be tried by the Registrar and merchants. It may well be that some cases of consequential damages should be referred to the Registrar and merchants, as being the best tribunal. In other cases, from motives of economy, or where greater nautical knowledge is required, it is very desirable that the matter should be decided by the Judge, with the assistance of the Elder Brethren. Now I need not discuss the cases cited on behalf of the plaintiffs, because they do not prove more than that, in the special circumstances of each case, the question of consequential damages was considered to be one which ought to be referred to the Registrar and his assistants. But those relied on by the defendant quite established the proposition that the Court has full power itself to deal with questions of this kind. The cases of *The Mellona* (1) and *The Sinda* (2), and several others were cited, but it is not necessary to refer to them at length. In the case of *The Aline* (3) the plaintiffs, whose vessel was damaged by collision on a voyage to St. Petersburg, claimed consequential damages, caused, as they alleged, by their vessel being detained beyond the Baltic season, and Dr. Lushington, not having sufficient evidence before him, referred the question of damages, both direct and consequential, to the Registrar and merchants, and said he would require it to be satisfactorily proved that every possible exertion was made to get the cargo to St. Petersburg. That was all that was decided in that case. In the later case of the *Eolides* (4) Sir John Nicholl came to the conclusion that a claim for consequential damages could not be sustained. In both these cases the Court dealt with the question

(1) 3 W. Robin. 13.

(2) Swa. 307.

(3) 5 Monthly Law Magazine, p. 307.

(4) 3 Hag. 367.

The Maid of Kent, Adm.

whether the claim for consequential damages could be sustained. In the present case the statement of claim contains the allegation that damage was done to the *Kate Covert*, and that she was compelled to take salvage assistance, and great losses and expenses had to be and were incurred by the plaintiffs. This allegation is met by the averment in the statement of defence, that by reason of the collision the *Kate Covert* sustained no other damage than the loss of her jibboom; and then comes the averment that "it is not true that the *Maid of Kent*, by colliding with her, caused the *Kate Covert* to drag her anchors, or to go upon the Mole Rocks, or to receive the damage thereby alleged to have been sustained, or to take salvage assistance." And in the last paragraph of the statement of defence the defendants say that the collision was an inevitable accident, and was not caused or contributed to by any negligence of the defendants. They further say that, in any event, they would be liable only for the aforesaid damage to the jibboom and upper works—that is, that they are not liable for any consequential damages.

I am of opinion that the Court should entertain and decide these questions with the assistance of the Trinity Masters; indeed, it was not denied that in this particular case of consequential damage the Court, assisted by the Elder Brethren, would be a better tribunal to decide the question than the Registrar and merchants, owing to the nautical knowledge of the Elder Brethren. In the result, I am of opinion that the Court itself can and ought to go into the question of consequential damages in this case in the present state of the proceedings, and that the general practice of the Court will not be interfered with by this being done. I shall therefore rule accordingly, and admit the evidence which is tendered.

Solicitors—W. W. Wynne & Son, agents for H. Forshaw & Hawkins, Liverpool, for plaintiff; Clarkson, Greenwell & Wyles, agents for J. Stilwell, Dover, for defendant.

PROBATE. }
1881. } *In the goods of JAMES PICKARD.*
March 8. } BANFIELD v. PICKARD.

Asserted Codicil—Commission to examine Witness as to her Knowledge of—20 & 21 Vict. c. 77. s. 26—Practice.

The Court has power, under 20 & 21 Vict. c. 77. s. 26, to order a commission to issue to examine a person as to her knowledge of a testamentary paper.

This was an application for an order to examine the defendant, Mrs. Pickard, under section 26 of the Probate Act, 1857, on an affidavit she had filed in answer to a subpoena calling upon her to file in the registry a codicil made by the deceased to his will. Mrs. Pickard was ill, and was unable to be examined in open Court.

Dr. Tristram moved for an order under section 26 of 20 & 21 Vict. c. 77 (1) for the examination of the defendant before a commissioner appointed by the Court. The words of the section give the Court this power.

Callaghan, for the defendant.—Even if the Court has the power the plaintiff has not shewn by his affidavit sufficient grounds for the making of an order for the defendant's examination.

THE PRESIDENT (SIR JAMES HANNEN).—The words of the section are, I think, sufficient to enable the Court to order the defendant to be examined *viva voce* before a commission, as she is unable to attend in open Court.

Order accordingly.

Solicitors—T. R. Watson, for plaintiff; Boulton, Sons & Sandeman, for defendant.

(1) 20 & 21 Vict. c. 77. s. 26: "If it be not shewn that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open Court, or upon interrogatories respecting the same."

PROBATE. }
1881. } *In the goods of WILLIAM HAM-*
March 22. } *MOND (deceased).*

*Administration—Absence of Administrator—Assignee in Bankruptcy—Creditor in Equity—Administration durante absentia—*38 Geo. 3. c. 87. s. 1—20 & 21 Vict. c. 77. s. 74—21 & 22 Vict. c. 95. s. 18.

A died intestate in 1857, and letters of administration of his estate were granted to B, his son. In 1855 B had been adjudicated a bankrupt, being at that time indebted to A in a sum of 2,250l. A dividend of 506l. 5s. became payable to A in respect of his debt, but such dividend was not received by him, or claimed by B as his administrator, and the money remained in the hands of the Court of Bankruptcy. In 1867 B was again adjudicated a bankrupt, and C was appointed as his creditor's assignee. B left England soon after his second bankruptcy, and had not since been heard of. The only asset remaining for distribution among the creditors under the second bankruptcy was the unclaimed dividend of 506l. 5s. due to A under the first bankruptcy.

The Court made a grant to C as to a creditor in equity of B of administration of the estate of A, limited to the sum of 506l. 5s., and to the absence of B.

William Hammond died intestate in 1857, and letters of administration were granted to his son, William Parker Hammond, as his sole next-of-kin.

In 1855 William Parker Hammond had been adjudicated a bankrupt, he being then indebted to his father in the sum of 2,250l. William Hammond proved against the bankrupt's estate for this sum, and a dividend of 506l. 5s. became payable to him in respect of such debt, but such dividend was never received by William Hammond.

In October, 1867, William Parker Hammond was again adjudicated a bankrupt, and Thomas Brooke was appointed the creditors' assignee of his estate.

In November, 1867, William Parker Hammond left England, and he had never since been heard of.

The only asset remaining for distribution under the second bankruptcy was

the above-mentioned sum of 506l. 5s., payable to the estate of William Hammond under the first bankruptcy. The interest in this sum passed to William Parker Hammond as administrator of his father, but he had never claimed it, and it remained in the hands of the Court of Bankruptcy.

One of the Registrars of the Court of Bankruptcy had refused to order payment of the unclaimed dividend under the first bankruptcy to Thomas Brooke as creditors' assignee under the second bankruptcy, and had directed that an application should be made to this division.

Searle now moved on behalf of Thomas Brooke for a grant of letters of administration of the estate of William Hammond under the 38 Geo. 3. c. 87. s. 1, the 20 & 21 Vict. c. 77. s. 74, and the 21 & 22 Vict. c. 95. s. 18, limited to the amount of the unclaimed dividend under the first bankruptcy. The administrator being out of the jurisdiction, the case falls within these statutes, which have been construed very liberally. *In the goods of Collier* (1) was an instance of a grant to the personal representative of a legatee; and in another case the grant was made, on the ground that the executor of an executor was out of the jurisdiction—*In the goods of Grant* (2).

He also referred to *In the goods of Ruddy* (3).

THE PRESIDENT (SIR JAMES HANNEN).—Brooke is, in fact, a creditor in equity as against the absent man, for he would have been entitled to have the asset of 506l. 5s. realised for the benefit of the creditors under the second bankruptcy. I therefore think that he is within the Acts, and I will make a grant of administration as to a creditor in equity, limited to the sum of 506l. 5s., and to the absence of William Parker Hammond.

Solicitors—Linklater, Hackwood, Addison & Brown.

(1) 25 Law Times, 444.

(2) 45 Law J. Rep. P., D. & A. 88; Law Rep. 1 P. D. 435.

(3) Law Rep. 2 P & D. 230.

PROBATE. }
1881. } *In the goods of ELIZABETH*
May 3, 24. } TOMLINSON.

*Will—Probate—Married Woman—
Power of Appointment—Real Estate.*

The Judicature Acts have not extended the probate jurisdiction of the Court in non-contentious business.

A will of a married woman which disposes only of real estate under a power of appointment is not entitled to probate, although it may contain an appointment of executors.

Elizabeth Tomlinson, wife of Edward Tomlinson, died on the 14th of December, 1872.

By the marriage settlement of Mr. and Mrs. Tomlinson, bearing date the 17th of December, 1850, certain real estate was conveyed to trustees upon trust to pay the annual proceeds to the wife for life, and after her death to the husband for life; and if there should be no child of the marriage, then upon such trusts as the wife should by her last will or codicil appoint.

Mrs. Tomlinson, by a will executed on the 13th of May, 1868, and a codicil executed on the 20th of July, 1871, directed the trustees under her marriage settlement to sell the real estate, and to stand possessed of the proceeds in trust for her husband for life; and after his death to pay certain legacies and to divide the residue.

Executors were appointed under the will, but neither the will nor the codicil dealt with any property other than the real estate comprised in the marriage settlement.

Edward Tomlinson died on the 21st of November, 1880, there having been no issue of the marriage.

J. A. Cross moved for probate of the will of Elizabeth Tomlinson.—The mere appointment of executors is sufficient to entitle a will to probate, although it may deal only with real estate—*In the goods of Lessee* (1). *In the goods of Jordan* (2)

(1) 2 Sw. & Tr. 442.

(2) 37 Law J. Rep. Prob. & M. 22; Law Rep. 1 P. & D. 555.

is also an authority in favour of the present application, and must be taken to have overruled Lord Penzance's previous decision in *In the goods of Barden* (3). The will, by implication, directs the sale of the settled estates, and therefore, in effect, disposes of personalty. The power of the Court in granting probate has been materially extended by the Judicature Acts.

Our. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN).—The deceased had certain powers of appointment conferred upon her by a marriage settlement, which was executed in 1850, and by which certain real estate was conveyed to trustees upon trust to pay the annual produce to her for her life, and then to her husband for life; and then, in the event of there being no issue (as the event happened), as the deceased should appoint by will. During her coverture she executed a will and codicil in exercise of the power of appointment, and bequeathed and appointed the proceeds to arise from the sale of real estate to be settled to trustees upon certain trusts.

It was argued before me that, as this will appointed executors, it was entitled to probate in any case; and it was further argued that, as the will by implication directed the sale of the real estate, it was therefore to be treated as personalty. It might, perhaps, be convenient if all instruments purporting to be testamentary should be admitted to probate; but I am not entitled, upon any ground of convenience, to assume a jurisdiction which does not belong to me; and I am of opinion that I have no jurisdiction to admit this instrument to probate.

Where the will is of a man or of a *feme sole*, the appointment of an executor has been held sufficient to entitle the will to proof; but where it is the case of a married woman executing a power by will, different considerations arise. Though it is in the form of a will, as required by the instrument giving the power, it is, in fact, a conveyance by

(3) Law Rep. 1 P. & D. 325.

In the goods of Elizabeth Tomlinson, Prob.

means of the appointment exercised; and, though an executor is appointed, the executor takes nothing in his character of personal representative. It was upon that ground that Sir Cresswell Cresswell, in an exactly similar case—*O'Dwyer v. Geare* (4)—refused to admit to probate the will of a married woman in execution of a power which related only to real estate; and the same question was before Lord Penzance in the case of *In the goods of Barden* (3). It was suggested that a subsequent decision of Lord Penzance in *In the goods of Jordan* (2) was inconsistent with his previous decision; but that was not the appointment of a married woman, but the case of a *feme sole* making her will; in which case, of course, the rule applicable to wills in general would be put in force—namely, that the appointment of an executor *prima facie* entitles a will to be admitted to proof. The case of *Tharp v. Macdonald* (5) was referred to, but that was a case of personality, and therefore the considerations are totally different.

It was also urged that some difference might arise in the practice of the Court since the Judicature Act, which undoubtedly gives larger powers; but it is to be observed that the Judicature Act has no effect whatever upon the non-contentious branch of the jurisdiction of this Court, and no question of the enlargement of the jurisdiction existing in the Court can arise in the non-contentious business. It can only be when a suit has been instituted that any such question can arise. I must, therefore, reject the application.

Solicitor—Richard White, agent for Malam Brothers, Blackburn, for applicant.

PROBATE. }
1881. } *In the goods of JOHN STEDHAM*
April 26. } (deceased).
May 10. }

Codicil — Erroneous Reference — Two Wills—Probate.

The testator executed a will in 1877 in which he directed the residue of his real and personal property to be sold and divided between his six children, to each of whom he had made devises. In 1878 he executed another will, in which he directed all his property to be sold and divided among the six children, certain arrears of accrued rent to be deducted from two of the shares. In 1880 he directed his solicitor to prepare a codicil, by which two of his children were to be deprived of all share in the property. The solicitor, by mistake, drew the codicil as a codicil to the will of 1877, there being no mention in the codicil of the will of 1878:—Held, that both the wills must be included with the codicil in the probate.

John Stedham, the testator, executed two wills and a codicil. The material contents of the three instruments are stated in the judgment.

Bayford moved for probate of the later will with the codicil. He referred to *In the goods of Steele* (1) and *In the goods of Ince* (2).

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on May 10).—The testator in this case made a will in May, 1877, by which, after making certain devises to each of his six children, he directed the residue of his real and personal estate to be sold and divided equally among those children. By another will, executed in February, 1878, he directed the whole of his real and personal property to be sold and divided equally between his six children, but with the direction that, in the case of two of them, certain arrears of accrued rent should be deducted from the shares. In January, 1880, he proposed to make a codicil which should deprive these two

(4) 1 Sw. & Tr. 465.

(5) Law Rep. 3 P. D. 76.

(1) 37 Law J. Rep. P. & M. 72n; Law Rep. 1 P. & D. 575.

(2) Law Rep. 2 P. & D. 111.

In the goods of John Stedham, Prob.

children of any share in the property, which was to be divided into four shares instead of six. The solicitor who was instructed to prepare this codicil, made it a codicil to the will of 1877, instead of a codicil to the will of 1878. I was asked to treat this as a mere mistake, and to allow probate of the codicil with the will of 1878, but I do not feel able to do so, since not only was there a mistake as to the date, but the mind of the solicitor (which constituted, for the occasion, the mind of the testator) was applied to the provisions of the will of 1877, which he moulded into what he conceived to be the intentions of the testator at the time when the codicil was made. If I were to allow probate of the codicil with the later will only, I should introduce nonsense into the two instruments, for the codicil refers to provisions in the will which would not be found there. It is always difficult to apply any principles of law to a blunder, but, after giving my best consideration to the matter, I have arrived at the conclusion that, since the codicil refers to the will of 1877, it must be taken to confirm it, and bring it into existence. It is, therefore, necessary that the earlier will should be included in the probate, so that the codicil may have an interpretation put upon it; but since the will of 1878 contains the most important dispositions of the testator, and these have never been revoked, this will must also be admitted to probate, leaving the effect of all the instruments to be determined, if necessary, by the Court of Construction.

Solicitor—E. F. Sealy, agent for W. Forward, Axminster, for applicant.

ADMIRALTY. }
1881. }
July 19. }

THE JOHN ORMSTON.

Collision—Limitation of Liability—Deduction in respect of Crew Space.

If at the time of a collision the deduction in respect of crew space authorised by 30 & 31 Vict. c. 124. s. 9, has not been made from the registered tonnage, and does not appear on the register, the owners cannot afterwards limit their liability on the basis of a deduction made subsequently to the collision, but the register as it existed at the time of the collision is conclusive.

This case came for hearing on the trial of a limitation of liability action by the owners of the *John M'Intyre*, the plaintiffs in such action, which ship had been found to blame in the original action for damage brought by her against the *John Ormston*, in respect of a collision which had taken place between the two vessels. It appeared that at the time when the collision took place no deduction appeared on the ship's register in respect of crew space, under the provisions of 30 & 31 Vict. c. 124. s. 9 (1), and the register tonnage was then 990 tons. The writ in the limitation action was issued on the 3rd of June, and on the 27th of June, the surveyor having inspected the ship, an allowance was made in respect of crew space of 49 tons, the registered tonnage being thereby reduced to 941 tons. The owners of the *John M'Intyre* now asked that their liability should be limited on the basis of the present registered tonnage, averring in the statement of claim that "the gross tonnage of the steamship *John M'Intyre* without deduction on account of engine-room space is 941 tons," and in support of this allegation they gave evidence that an allowance as above stated had been made after the collision. The defendants relied on the register of the ship at the time of the collision.

(1) Sub-section 4 is as follows: "Every such place shall, whenever the ship is registered or re-registered, be inspected by one of the surveyors of the Board of Trade, who shall, if satisfied that the same is in all respects such as is required by this Act, give to the Collector of Customs a certificate to that effect, and thereupon such space shall be deducted from the register tonnage."

The John Ormston, Adm.

G. Bruce, for the plaintiffs, argued that no injustice was done to the defendants by taking the present register, as the survey was only a formality, which could take place at any time. The register was not conclusive and taking the present register in no way was any alteration of the ship's tonnage, and if the application was not granted the owners of the *John Ormston* would gain by a mere oversight on the part of the owners of the other vessel. He referred to the *Franconia* (2).

Phillimore, contra.—The limitation is by the Act (3) in respect of the registered tonnage—that must mean at the time of collision.

SIR R. J. PHILLIMORE.—In this case I have no doubt that the tonnage upon which the limitation of liability must be based is that which appears in the ship's register at the time of collision, and that if the deduction in respect of the crew space does not appear on the register at such time the owners of the offending vessel must take the consequences of their neglect of statutory rules.

Solicitors—Gellatly, Son & Warton, for plaintiffs;
Cooper & Co., for defendants.

PROBATE. } In the goods of PERCY ALFRED
1881. } ECCLES ASTON.
April 27. }

Will—Construction—Residuary Legatee
—“Money, stocks, funds or other securities not otherwise hereafter specially devised”—*Renunciation by Executors—Administration with Will annexed—Memorandum.*

The testator bequeathed to his father “a life interest or until he marry again of such money, stocks, funds or other securities not hereafter specially devised as I may die possessed of, such portion of my capital to be invested.” He gave the other two-thirds of his capital not otherwise specially devised to such of his brothers and sisters as should

attain twenty-one, and he directed that on his father's death or second marriage the one-third share and the share of his mother's money which would then belong to him should be divided between his brothers and sisters. There was no specific gift of the residue. The two executors named in the will renounced probate.

The Court made a grant to the father, as next-of-kin of the deceased, of letters of administration with the will annexed, with a memorandum that the grant was so made because the will contained no clear disposition of the residue.

Percy Alfred Eccles Aston, of 3 Dean's Yard, Westminster, died on the 23rd of February, 1881, having on the 17th of January, 1880, duly executed a will, which contained the following provisions: “Also to my father, Joseph Keech Aston, a life interest or until he shall marry again of one-third of such money, stocks, funds or other securities not hereafter specially devised as I may die possessed of, such portion of my capital to be invested; . . . the other two-thirds of my capital not otherwise hereafter specially devised I give to such of my brothers and sisters as shall attain twenty-one years, . . . and on the death of my father or his second marriage, the one-third, . . . and also my share of the money of my late mother which then comes to me, to be divided amongst my brothers and sisters.”

The will contained no nomination of a residuary legatee.

The two executors named in the will had renounced probate.

E. T. Holland moved for a grant of letters of administration with the will annexed to Joseph Keech Aston, father of the deceased, as next-of-kin, the language used by the testator not amounting to a gift of the residue.

He referred to *Love v. Thomas* (1), *Byrom v. Brandreth* (2), *Hopkins v. Abbott* (3) and *Williams v. Williams* (4).

(1) 5 De Gex, M. & G. 315.

(2) 42 Law J. Rep. Chanc. 824; Law Rep. 8 Chanc. 475.

(3) 44 Law J. Rep. Chanc. 316; Law Rep. 19 Eq. 222.

(4) 47 Law J. Rep. Chanc. 857; Law Rep. 8 Ch. D. 789.

(2) Law Rep. 3 P. & D. 164.

(3) 25 & 26 Vict. c. 63, sub-s. 4.

In the goods of Percy Alfred Eccles Aston, Prob.

THE PRESIDENT (SIR JAMES HANNEN).
—The grant may be made to the father as next-of-kin, with a memorandum (which I am informed is according to the usual practice) stating that the grant is so made because there is no clear disposition of the residue.

Solicitors—Withall & Compton, for applicant.

is liable for all her acts done in that capacity—*Williams on Executors* (1); *Pemberton v. Chapman* (2). The husband has, however, no objection to a grant being made to the attorney of the wife.

Powles consented.

THE PRESIDENT (SIR JAMES HANNEN) made a grant under the 20 & 21 Vict. c. 77. s. 73 of letters of administration, with the will annexed, to the attorney of the wife.

Solicitors—Cattlin, for applicant; H. F. & E. Chester, for opponent.

PROBATE.
1881.
March 22. }

CLERKE v. CLERKE.

Will—Probate—Married Woman Executrix—Opposition of Husband—Administration with Will annexed—Grant to Attorney—20 & 21 Vict. c. 77. s. 73.

Where a married woman was appointed by a will sole executrix and universal legatee to her separate use, and the husband objected to her taking probate, the Court, with the consent of the husband, made a grant, under the 20 & 21 Vict. c. 77. s. 73 of the Probate Act, 1857, to the attorney of the wife of letters of administration with the will annexed.

Quære, whether a married woman is entitled to a grant of probate without her husband's consent.

Hannah Noble Warden, widow, died at Newington, Surrey, on the 29th of May, 1880, having on the 20th of May, 1880, executed a will, by which she appointed her daughter, Mary Anne Clerke, her sole executrix and sole legatee to her separate use.

Mary Anne Clerke had been for seventeen years separated from her husband, Charles Frederick Clerke, who had entered a caveat.

Powles now moved for a grant of probate to Mrs. Clerke.

Searle, for the husband, opposed the application.—A married woman has no right to undertake the office of executrix without the consent of her husband, who

PROBATE.
1881.
May 3. }

In the goods of JOHN HATTON.

Will—Attestation—Duplicate Will—Signatures upon Separate Papers.

The intended will of the testator was written twice over. The two testamentary papers were differently worded, but were to the same effect. Through a mistake one of the documents was signed by the testator, and the other by the two attesting witnesses:—Held, that the will was not duly attested.

John Hatton, tailor, of Thostock, Leicestershire, died on the 29th of November, 1876.

On the 24th of February, 1876, the deceased sent for two of his friends, named William Evitt and John William Hopkins. Evitt, under his directions, wrote out a short will for him, by which his wife was appointed sole executrix. Hopkins afterwards wrote out another will in different language, but to the same effect; and through an oversight the first paper was signed by the testator, and the second one was signed by Evitt and Hopkins as attesting witnesses.

Searle moved for probate of the instru-

(1) 8th ed., p. 236, 1844.

(2) E., B. & E. 1056.

In the goods of John Hatton, Prob.

ments as together containing the will of the deceased.

He referred to *In the goods of Bradock* (1).

THE PRESIDENT (SIR JAMES HANNEN).
—There the two papers were pinned together. This case is more like *In the goods of Hunt* (2), where two sisters prepared their wills in duplicate, and each of them by mistake executed the will of the other. A will may be composed of numerous papers which together make but one instrument, but these are sepa-

rate and independent documents. I am always desirous of correcting errors, when possible, so as to carry out the intentions of a testator, but in this case the names of the testator and those of the attesting witnesses are upon separate papers, and therefore the requirements of the law have not been fulfilled. I must therefore refuse probate.

Solicitors—F. & G. Braikenridge, agents for Thos. Knowles, Burton-on-Trent, for applicant.

(1) 45 Law J. Rep. P., D. & A. 76; Law Rep. 1 P. D. 488.

(2) 44 Law J. Rep. Prob. & M. 43; Law Rep. 3 P. & D. 250.

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TO THE REPORTS OF CASES

IN THE

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

MICHAELMAS 1880 TO MICHAELMAS 1881.

ADMINISTRATION—*absence of administrator: assignee in bankruptcy: creditor in equity: administration durante absentia*: 38 Geo. 3. c. 87. s. 1: 20 & 21 Vict. c. 77. s. 74: 21 & 22 Vict. c. 95. s. 18]—A died intestate in 1857, and letters of administration of his estate were granted to B, his son. In 1855 B had been adjudicated a bankrupt, being at that time indebted to A in a sum of 2,250*l.* A dividend of 506*l.* 5*s.* became payable to A in respect of his debt, but such dividend was not received by him, or claimed by B as his administrator, and the money remained in the hands of the Court of Bankruptcy. In 1867 B was again adjudicated a bankrupt, and C was appointed as his creditor's assignee. B left England soon after his second bankruptcy, and had not since been heard of. The only asset remaining for distribution among the creditors under the second bankruptcy was the unclaimed dividend of 506*l.* 5*s.* due to A under the first bankruptcy. The Court made a grant to C as to a creditor in equity of B of administration of the estate of A, limited to the sum of 506*l.* 5*s.*, and to the absence of B. *In the goods of Hammond*, 78

— *pending suit: receiver pending suit: termination of: costs*]—The duties of an administrator or receiver, pending suit, commence from the date of the order of appointment, and, if the decree in the action is appealed from, they do not cease until the appeal has been disposed of. The costs of an administrator and receiver pending suit were allowed from the date of appointment until the dismissal of the appeal from the decree in the action. *Taylor v. Taylor*, 45

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s. 18, and as such may obtain administration *de bonis non* to the intestate limited to the fund to which the assignee is entitled. *In the goods of Hammond*, 70

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AMBIGUITY. See Executor.

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CHARTER-PARTY—"safe port, or as near thereunto as she can safely get, and always lay and discharge afloat": evidence of custom at port of discharge]—When it is agreed by a charter-party that a ship shall proceed to a "safe port, or as near thereunto as she can safely get, and always lay and discharge afloat," the master is not bound, if ordered to a port which can only be entered by first discharging part of the cargo, to allow such an amount to be taken out as will enable her to enter the port, even if the lighterage can be done in a place and under circumstances which will not expose the vessel to danger; and in such a case evidence that the custom of the port is to lighten vessels, when necessary, before entering the port is not admissible. *The Alhambra* (App.), 38

— *measurement of cargo*]—The general rule that cargo is to be paid for according to the quantity measured and delivered at the port of discharge must prevail, unless words shewing distinctly an intention that a measurement at the port of loading is to be taken are found in the charter-party. *The Skandinav*, 46

— See Mortgage.

CODICIL—enumeration of: incorporation]—Testator executed six codicils, enumerating each as "This is a first codicil to my will," "This is a second codicil," &c., and so on throughout the whole of the six codicils, but the third codicil by inadvertence was not duly executed:—*Held*, that the mere enumeration of the codicils did not make the last executed a sufficient recognition and confirmation of the third codicil. *Stockil v. Punshon*, 14

—erroneous reference: two wills: probate]—The testator executed a will in 1877, in which he directed the residue of his real and personal property to be sold and divided between his six children, to each of whom he had made devises. In 1878 he executed another will, in which he directed all his property to be sold and divided among the six children, certain arrears of accrued rent to be deducted from two of the shares. In 1880 he directed his solicitor to prepare a codicil, by which two of his children were to be deprived of all share in the property. The solicitor, by mistake, drew the codicil as a codicil to the will of 1877, there being no mention in the codicil of the will of 1878:—*Held*, that both the wills must be included with the codicil in the probate. *In the goods of Stedham*, 75

— See Married Woman.

COLLISION—regulations for preventing collisions, arts. 12 and 18: sailing vessel hove-to on port tack]—A vessel hove-to on the port tack is within the provisions of article 12, and is therefore bound to keep out of the way of a vessel close-hauled on the starboard tack. *The Rosalie*, 3

—Thames by-laws]—When a collision is caused by the improper navigation of a vessel in the Thames, the fact that the other vessel has infringed a by-law, the breach of which is punishable by payment of a penalty, will not take away the liability of the first-named vessel if her careless navigation is the primary cause of the collision. *The Margaret*, 3

—towing: responsibility of pilot for tug]—When a steam-tug, towing a vessel on board of which is a pilot, whose employment is compulsory, without orders from such pilot adopts a wrong manœuvre, the owners of the ship are responsible for the consequences, as the pilot cannot be perpetually giving orders as to the steering of the tug. *The Siquasi*, 5

—liability of owners of a foreign ship: lex fori: general maritime law]—The liability of foreign owners sued in a British Court in respect of a collision on the high seas is governed by general maritime law, which is administered in such Court, and not by the *lex*

loci of the country under the flag of which the ship is sailing. Therefore the allegation that by Spanish law the owners of a ship were not personally liable for the default (if any) of the master and crew of such ship,—*Held*, on demurrer, not to be a valid ground of defence. *The Leon*, 59

—limitation of liability: deduction in respect of crew space]—If at the time of a collision the deduction in respect of crew space authorised by 30 & 31 Vict. c. 124. s. 9 has not been made from the registered tonnage, and does not appear on the register, the owners cannot afterwards limit their liability on the basis of a deduction made subsequently to the collision, but the register as it existed at the time of the collision is conclusive. *The John Ormston*, 78

—infringement of Thames conservancy rules: damages: contributory negligence: cause of action]—A dumb barge by the negligent navigation of those on board came into contact with a schooner moored at anchor in a proper place in the river Thames. The schooner had her anchor hanging over her bow with the stock above water, contrary to the 20th by-law of the Thames Conservancy Rules. The anchor made a hole in the barge, and caused damage to her cargo. But for the improper position of the anchor neither the barge nor her cargo would have received any damage:—*Held*, that the owners of the barge could maintain an action of damage against the schooner; but that, as there had been contributory negligence on the part of those on the barge, the plaintiffs were only entitled to half the damage sustained. *The Margaret* (App.), 67

— See Salvage.

COMMISSION. See Practice.

COMPROMISE. See Probate Causes. Will.

COSTS. See Administration pending suit. Legatee. Salvage.

CREDITOR. See Administration.

CUSTOM. See Charter-party.

DAMAGE—consequential damages: practice of the court]—It is not an inflexible rule of practice that all questions of damage should be referred to the Registrar and merchants. Therefore when the question of consequential damages was distinctly raised by the pleadings, and the Court, assisted by Trinity Masters, was admittedly the best tribunal to determine the issues so raised, the Court ruled that evidence with

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respect to such issues might be given at the hearing, and that it would itself decide them, and not refer them to the Registrar and merchants. *The Maid of Kent*, 71

— See Collision.

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EXECUTOR—*erroneous description of: ambiguity: extrinsic evidence*—Testator, a Congregational minister, appointed "William McCormack, of Canonbury," an executor of his will. There was no person answering the description "William McCormack, of Canonbury," but there was a Thomas McCormack, who had been for several years one of the deacons at the testator's chapel, and he had a son named William Abraham McCormack:—*Held*, that extrinsic evidence was admissible to shew who was intended by the testator to be his executor. *In the goods of Brake*, 48

EXECUTRIX. See Will.

FOREIGN JUDGMENT—*admiralty jurisdiction: judgment: "in personam": action "in rem" in England*—The Court of Admiralty has no jurisdiction to enforce a judgment *in personam* obtained in a foreign country by an action *in rem*, founded on that judgment, in this country. *The City of Mecca* (App.), 58

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JURISDICTION—*difference of opinion between judge and nautical assessors: respective functions of judge and assessors*—The Court should be guided by the advice of the assessors only on matters of nautical science, but if it holds a different opinion to them, even on such ques-

tions, judgment must be given in accordance with that opinion. *The Aid*, 40
Semble, the function of assessors is merely to advise the Court on matters of nautical science, not to decide issues of fact. *Ibid*.

— See Foreign Judgment.

LEGATEE—*codicil proved by: costs as of executor proving*—A legatee who propounds a codicil and establishes its validity is entitled to the same costs as those to which an executor would be entitled. A died leaving a will and codicil. B, the executor, took probate only of the will. C, a legatee under the codicil, propounded the document, and proof of it was opposed by B, the executor, and defendant in the action. C having established its validity, the Court pronounced for the codicil and condemned B in costs, and gave the plaintiff also out of the estate such sum *nominis expensarum* as would cover the additional expenses incurred by her. *Wilkinson v. Corfield*, 44

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LIMITATION OF LIABILITY. See Collision. Salvage.

MAINTENANCE. See Separation Deed.

MARITIME LAW. See Collision.

MARRIAGE—*marriage in England between a domiciled Scotchman and an Englishwoman: marriage dissolved by decree of Scotch court for the husband's adultery only: validity of decree*—A domiciled Scotchman married an Englishwoman in England in 1861. After the marriage he returned to Scotland with his wife, and remained there domiciled till 1863, when the marriage was, upon the petition of the wife, dissolved by a decree of the Scotch Court, by reason of the husband's adultery, not coupled with cruelty:—*Held* (affirming the decision of the President), that the decree was valid and binding on the Courts of this country, although at the time of the marriage the lady was an Englishwoman, and the decree had been granted upon a ground which would not have justified a divorce in England. The *bona fide* domicile of the husband, which upon the marriage becomes also that of the wife, is the test for determining by what law all the incidents of the *status* of the parties to the marriage contract are to be governed. The *lex loci contractus* governs the forms and solemnities by which the marriage is celebrated. *Harvey* (otherwise *Farnie*) v. *Farnie* (App.), 17
Divorce is an incident of the *status* to be disposed of by the law of the domicile of the parties. *Ibid*.

Whether an English husband can, by going to a foreign country where marriages are dissoluble

at pleasure, for the purpose of acquiring a domicile there, obtain a valid and effectual divorce, *quære*. *Lolley's Case* (Russ. & R. 237; 2 Cl. & F. 567) distinguished. *McCarthy v. De Cair* (2 Russ. & M. 614; 2 Cl. & F. 568) commented on and explained. *Ibid.*

MARRIED WOMAN—*will of, with husband's consent : husband named executor : death of husband before document proved : probate*—A will was made by a married woman, who appointed her husband one of her executors. He assented to the making of the will, and after his wife's death he expressed his intention to take probate of it, but died before doing so. The Court held that he had not withdrawn his consent, and decreed probate of the will to the surviving executor. *In the goods of Cooper*, 41

—*will of, made under power : power not recited in will : codicil executed during widowhood referring to will : probate*—A married woman executed in duplicate a will under a power, but did not recite the power in the instrument. On her husband's death she executed a codicil, also in duplicate, to her "last will and testament." The codicil was written on the sheets of paper containing the will, and the only known will in existence was that which she made during coverture.—*Held*, that the will was identified and confirmed by the codicil, and probate was granted of both documents. *In the goods of Heathcote*, 42

MASTER—*forfeiture of wages : habitual drunkenness*—A master who is proved to have been habitually and grossly drunk on a voyage may thereby forfeit the whole of his wages. *The Macleod*, 6

MORTGAGE—*charter-party*—A mortgagee cannot object to a charter-party being carried out upon the ground that the effect of so doing will be to remove the ship from the jurisdiction of the Court, and thus make it difficult for him to enforce his security. *The Fanchon*, 4

NEGIGENCE. See Collision.

NULLITY—*suit for by wife : decree nisi : wife unwilling to proceed with suit : application by husband for decree absolute : application refused*—In a suit for nullity the wife obtained a decree nisi, but was unwilling to proceed further. The Court declined to make the decree absolute on the application of the respondent. *Halpen v. Boddington*, 61

POWER. See Married Woman.

PRACTICE—*husband and wife : protection order : death of wife : will of wife : probate action : statement of defence and counter-claim praying for discharge of protection order : demurrer : divorce*

act (20 & 21 Vict. c. 85), ss. 21, 23, 46 : *divorce and matrimonial clauses amendment act* (20 & 21 Vict. c. 108), s. 8 : *judicature act*, 1873 (36 & 37 Vict. c. 66), s. 24. sub-s. 3—It is competent to the husband or any person claiming under him to apply after the death of the wife to discharge a protection order on the ground that it had been obtained without his knowledge and by means of fraud and false representations, and that he was not guilty of desertion. The plaintiff, as executor, propounded the will of the defendant's wife. The statement of claim alleged that the deceased had duly executed the will when living apart from her husband, after obtaining a protection order, and being possessed of separate estate. The statement of defence alleged that the defendant had not been guilty of desertion, that the protection order had been obtained without his knowledge, and by fraud and false representation and false statements, and ought to be set aside, and denied that the deceased was possessed of separate estate. The defendant by his counter-claim claimed—first, that it might be declared that the protection order was fraudulent and void, and that the same be set aside and discharged; second, that the Court should pronounce against the will propounded by the plaintiff; third, that the Court should decree to the defendant a grant of letters of administration of the personal estate of the deceased as her lawful husband; fourth, that in the alternative the Court should decree to the defendant a grant of letters of administration of so much of the personal estate and effects of the deceased as she had no power to dispose of by her will. The plaintiff demurred to the allegation in the statement of defence that the protection had been obtained without the knowledge of the defendant, and by fraud and by false representations and statements, and ought to be set aside, on the ground that it was not alleged that the protection order had been revoked, and that it was not competent to the defendant in this proceeding to assail its validity. The plaintiff further replied that the defendant had for a long time during the lifetime of the deceased known of and acquiesced in the existence of the protection order, and had allowed the deceased to act thereunder, and that he was thereby estopped from now questioning its validity.—*Held*, that the counter-claim was good, and that an application to discharge the protection order could be entertained in a probate action. *Mudge v. Adams*, 49

—*petition for divorce : petitioner in India : affidavit verifying petition sworn by solicitor*—The petitioner in a divorce suit was on military service in India, and unable to make before a duly constituted authority the usual affidavit verifying the petition. The Court, under the circumstances, allowed the petition to be verified by the affidavit of the solicitor, but ordered that the petitioner's affidavit should also be filed before the hearing. *Ex parte Bruce*, 64

PRACTICE (continued)—*asserted codicil: commission to examine witness as to her knowledge of:* 20 & 21 Vict. c. 77. s. 26]—The Court has power, under 20 & 21 Vict. c. 77. s. 26, to order a commission to issue to examine a person as to her knowledge of a testamentary paper. *In the goods of Pickard. Banfield v. Pickard*, 72

— See Damage. Salvage. Separation Deed.

PROBATE—*will: married woman: power of appointment: real estate*]—The Judicature Acts have not extended the probate jurisdiction of the Court in non-contentious business. A will of a married woman which disposes only of real estate under a power of appointment is not entitled to probate, although it may contain an appointment of executors. *In the goods of Tomlinson*, 74

— See Legatee. Will.

PROBATE CAUSES—*compromise*]—In sanctioning arrangements between parties to Probate causes, the Court acts upon the statement of counsel that the compromise is expedient, but it does not by such sanction thereby intend to bind infants or any other persons. *Norman v. Strains*, 39

PROTECTION ORDER. See Husband and Wife.

RECEIVER. See Administration pending Suit.

REGISTRAR AND MERCHANTS. See Damage.

SALVAGE—*inequitable agreement: costs*]—The Court will set aside an agreement to pay salvage remuneration when the amount agreed to be paid to the salvors is so exorbitant as to be inequitable, and will decree a reasonable sum in place thereof. Under such circumstances each side must pay its own costs of the action. *The Medina* (45 Law J. Rep. P., D. & A. 81; Law Rep. 1 P. D. 272; on appeal, Law Rep. 2 P. D. 5) followed. *The Silesia*, 9

— *bullion: rate of contribution to salvage: practice: separate appearance: costs*]—Each part of salvaged property must contribute towards the salvage awarded according to its value, and there is no difference in this respect between bullion and any other kind of property. *The Emma* (2 W. Robin. 315; 3 Notes of Cas. 172) overruled. Where a party obtains leave to appear separately at the trial he does so subject to his costs being disallowed. *The Longford*, 28

— *collision: limitation of liability: liability of owners of wrongdoing ship for charges of raising sunken cargo: removals of wreck act, 1877* (40 & 41 Vict. c. 16), s. 4]—When a ship which is

to blame for a collision is sunk in consequence of it, the owners thereof are not entitled to obtain from the owners of the cargo laden on board the cost of salving it by raising it. When the Thames Conservancy raises a ship and cargo, sunk by collision, under the authority of the Removals of Wreck Act, 1877 (40 & 41 Vict. c. 16), s. 4, the shipowner is not entitled to recover from the cargo-owner any proportion of the cost incurred in raising the cargo, even if he has limited his liability in respect of damage by the collision. *The Eltrick*, 65

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SCOTLAND, PERSONAL ESTATE IN. See Will.

SEPARATION, DEED OF—*allowance secured to wife: covenant not to sue for maintenance: after separation husband guilty of incestuous adultery: wife entitled to usual order for permanent maintenance*]—The wife, under a deed of separation, agreed to accept a certain sum as a provision for her support, and covenanted not to sue her husband for any further maintenance. After their separation she discovered that her husband had been guilty of incestuous adultery, and she obtained a decree for dissolution of marriage on that ground:—*Held*, that she was not precluded by the deed from claiming to have the usual order for permanent maintenance made in her favour. *Morrall v. Morrall*, 62

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WAGES—*insubordination: power of owners to dismiss officers*]—The owners of a vessel have a right to dismiss an officer who directly or indirectly promotes insubordination, and such officer has no right to wages otherwise due to him by agreement after such dismissal. *The Marina*, 33

WILL—*attestation: duplicate will: signatures upon separate papers*]—The intended will of the testator was written twice over. The two testamentary papers were differently worded but were to the same effect. Through a mistake one of the documents was signed by the testator, and the other by two attesting witnesses:—*Held*, that the will was not duly attested. *In the goods of Hatton*, 78

— *construction: residuary legatee: "money, stocks, funds or other securities not otherwise hereafter specially devised": renunciation by executors: administration with will annexed: memorandum*]—The testator bequeathed to his father "a life interest or until he marry again of such money, stocks, funds or other securities

not hereafter specially devised as I may die possessed of, such portion of my capital to be invested." He gave the other two-thirds of his capital not otherwise specially devised to such of his brothers and sisters as should attain twenty-one, and he directed that on his father's death or second marriage the one-third share and the share of his mother's money which would then belong to him should be divided between his brothers and sisters. There was no specific gift of the residue. The two executors named in the will renounced probate. The Court made a grant to the father, as next-of-kin of the deceased, of letters of administration with the will annexed, with a memorandum that the grant was so made because the will contained no clear disposition of the residue. *In the goods of Aston, 77*

— *two wills: by first the whole of testator's real and personal estate given to wife, the sole executrix, and all former wills revoked: by second will the household furniture and effects, and all moneys whatsoever deposited or invested to wife for life, and after her decease to testator's sister-in-law, joint executrix with widow: no disposition of real estate or residue of the personal estate, and no revocatory clause: probate of both papers*—G. H. made two wills. By the first of such wills he gave the whole of his real and personal estate and effects to his wife E. H. absolutely, and appointed her sole executrix thereof, and revoked all former wills. By the second will he gave his household furniture and effects and all moneys whatsoever deposited or invested to his wife for life, and after her decease to his wife's sister, M. B., absolutely, whom he also appointed joint executrix with his wife. The said will contained no disposition of the real estate or the residue of the personal estate, and no clause revocatory of previous wills. The Court granted probate of both papers as together constituting the will of the testator, but before doing so required that notice of the application for such probate should be served on the heir-at-law. *In the goods of Hartley, 1*

— *made in contemplation of perilous journey: not contingent*—J. M. being about to undertake a perilous journey in Australia, made his will. It commenced: "On leaving this station (Eulbertie, Cooper's Hill) for Thargomindah and Melbourne, in case of my death on the way, know all men this is a memorandum of my last will and testament." The will then disposed of all his property between his wife and children:—*Held*, that the will was not contingent upon the event of the testator's death on the journey he was about to undertake when the will was made. *In the goods of Mayd, 7*

— *made in India: personal estate of deceased (with exception of a few articles of trifling value) situate in Scotland: will proved in Scotland:*

application by legatee for a grant of administration with will annexed or an order on executors to prove will in England refused—A died in India, leaving a duly executed will wherein he named H. a legatee, and appointed executors. His personal estate (with the exception of a few articles in this country of trifling value) consisted of claims on the estate of B, his uncle, which was situate in Scotland, and was being there administered. The executors of B's will obtained confirmation of it in Scotland, including the inventory of his effects, all his property, wherever situate, within the United Kingdom, and the inventory was duly sealed in the principal registry of the Court of Probate. In these circumstances, the Court refused to make an order on the executors of A who had proved his will in Scotland to prove the will also in this country or to grant administration (with the will annexed) to H., holding that no necessity or duty towards the applicant or the estate of the deceased at present appeared for the executors to take probate in England, and that until such necessity or duty arose the Court was not called upon to decide, in default of their doing so, to whom administration should be granted. *In the goods of Ewing, 11*

— *interlineation after execution: will as altered approved of by testatrix as "her last will and testament": interlineations initiated by witnesses: probate of interlineations refused*—Testatrix duly executed her will in the presence of two witnesses, who subscribed and attested it. Immediately after its execution an omission was discovered in the will, and this omission was supplied by an interlineation. Testatrix approved of the will as altered, acknowledging it as her "last will and testament," and the witnesses then, in her presence, placed their initials in the margin opposite the interlineation:—*Held*, that there had been no re-execution of the will, and that consequently the interlineation should be omitted from the probate. *In the goods of Shearn, 15*

— *by testatrix (a domiciled Englishwoman) prior to marriage with an Italian subject domiciled in Italy: contest as to validity of will between the executor and husband: compromise: probate of will obtained in common form by executor: alleged later will revoking first: validity denied by executor of earlier will: suits in England and Italy: injunction*—A, an Englishwoman by birth, intermarried with B, a natural born Italian subject, and domiciled in Italy. In 1865, she being then domiciled in England, and some years prior to her marriage, made a will, and thereof appointed the plaintiff (her brother) executor. After her death, which happened in Italy in 1873, a contest arose between her executor and her husband (the defendant) as to the validity of the will. An agreement of compromise was come to between them, and in pursuance of it the plaintiff obtained probate of

the will in common form. In 1878 the defendant produced an alleged holographic will of his deceased wife, which bore date December, 1872, and revoked the earlier will. Thereupon the plaintiff commenced a suit in this Court, claiming probate in solemn form of the will of 1865. The defendant appeared under protest, but filed a defence and counter-claim, setting up the alleged will of 1872; and he at the same time commenced a suit for a decree affirming its validity in the Civil and Correctional Tribunal of Naples. In these circumstances the Court refused to grant an injunction restraining the defendant from proceeding with the Italian suit. *Dawkins v. Simonetti* (App.), 30

WILL (continued)—*feme covert executrix: refusal of husband to assent to probate: grant to nominee of wife under section 73 of 20 & 21 Vict. c. 77*—A married woman was appointed sole executrix of a will and universal legatee. Her husband objected to her taking probate, and the Court, under section 73 of 20 & 21 Vict. c. 77, made the grant to her attorney. *Quere*, whether a husband has an absolute right to object to his wife taking probate of a will to which she has been appointed executrix. *Clerke v. Clerke*, 69

— *probate: married woman executrix: opposition of husband: administration with will annexed: grant to attorney: 20 & 21 Vict. c. 77. s. 73*—Where a married woman was appointed by a will sole executrix and universal legatee to her separate use, and the husband objected to her taking probate, the Court, with the consent of the husband, made a grant, under the 20 & 21 Vict. c. 77. s. 73, of the Probate Act, 1857, to the attorney of the wife of letters of administration with the will annexed. *Clerke v. Clerke*, 78

Quere, whether a married woman is entitled to a grant of probate without her husband's consent. *Ibid.*

— of married woman. See Husband and Wife.

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THE
LAW JOURNAL REPORTS

FOR
THE YEAR 1881:

CASES

DECIDED BY THE
JUDICIAL COMMITTEE AND THE LORDS OF
Her Majesty's Privy Council,

REPORTED BY
EDWARD BULLOCK, Esq., BARRISTER-AT-LAW.

MICHAELMAS, 1880, TO MICHAELMAS, 1881.



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CASES ARGUED AND DETERMINED

IN THE COURT OF

THE JUDICIAL COMMITTEE AND THE LORDS OF

Her Majesty's Privy Council.

MICHAELMAS 1880 to MICHAELMAS 1881.

44 Victoria.

1880. { THE ORIENTAL BANK CORPORA-
July 14. { TION (appellants) v. HENRY
WRIGHT (respondent).

Cape of Good Hope—Bank Notes Duty Act, 1864—Construction.

The Bank Notes Duty Act, 1864 (Cape Statute), by section 1 provides that every joint-stock bank trading as bankers in the colony and issuing bank notes, shall transmit to the treasurer of the colony monthly returns of the amount of the bank notes in circulation by such bank. Section 10 provides that every bank shall in making such returns include therein all bank notes of the same or any other bank which shall on the face of them bear to have been issued at or from any place in Africa, or elsewhere not within the colony; and which notes, having come into the hands of such bank, shall during the month have been put into circulation by such bank:—Held, that the provisions of both sections apply only to banks of issue issuing within the colony notes payable by themselves.

This was an appeal from an order of the High Court of Griqualand West, by which the appellants were required to render to the respondent a return of the notes put into circulation by their Kimberley agency from the 1st of November, 1875, up to the date of the application.

The appellants were a banking corporation, established under royal charter, having a head office in London and a colonial

office at Port Elizabeth, in the colony of the Cape of Good Hope, and an agency at Kimberley, in the province of Griqualand West.

The respondent was the acting treasurer of the province of Griqualand West.

By a proclamation dated the 27th of October, 1871, No. 67, afterwards ratified by Her Majesty, the province of Griqualand West was declared to be British territory. This proclamation was issued by the governor under a commission from Her Majesty.

By a second proclamation dated the 27th of October, 1871, No. 68, afterwards ratified by Her Majesty, the laws and usages of the colony of the Cape of Good Hope were declared to be the laws of Griqualand West, so far as the same should be applicable.

The same proclamation declared that stamp and licence duties and fees of office, at that time payable in the Cape colony, should be payable in Griqualand West.

By a statute of the colony of the Cape of Good Hope, No. 6, 1864, entitled "The Bank Notes Duty Act, 1864," it is enacted that every joint-stock bank trading as bankers in the colony of the Cape of Good Hope, and issuing bank notes, shall transmit to the treasurer of the colony of the Cape of Good Hope monthly returns; and by the same Act certain duties were imposed upon bank notes.

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In the year 1872 the appellants, who had then a colonial branch at Port Elizabeth, in the colony of the Cape of Good Hope, established an agency at Kimberley.

The Kimberley agency of the appellants never issued or put into circulation its own local notes or any notes purporting on the face of them to be issued in the province of Griqualand West, but had always used the notes of the appellants, dated and payable in Port Elizabeth, and which notes had in every case been put into circulation, and had paid bank-note duty in the colony of the Cape of Good Hope previously to having been used at the Kimberley agency.

On the 27th of June, 1876, the respondent moved the High Court of the province for an order in the terms of the Bank Notes Duty Act, 1864, commanding the appellants to make a return of all bank notes put into use or circulation by the bank at their Kimberley agency.

On the 15th of March, 1877, the motion came on for hearing at Kimberley, before the recorder of Griqualand West, who ordered a return to be made to the respondent by the appellants at Kimberley—Of all notes outstanding on the last day of November, 1875, and on the last day of every succeeding month up to the date of application; of all notes of the Kimberley agency of the Oriental Bank Corporation, or any other bank, which notes should on the face of them appear to have been issued at or from any place in Africa, or elsewhere, not within the limits of the said province, and which notes having come at any time, and in any measure, to the hands of such bank since the 1st day of November, 1875, should, during the month for which any such return should be made, have been by the bank paid out or put into use or circulation in the said province.

The appellants obtained leave to appeal from this order.

Mr. Benjamin and Mr. Mathew, for the appellants.—The Bank Notes Duty Act, 1864, of the colony of the Cape of Good Hope, did not and has never become part of the law of the province of Griqualand West. The appellants' agency at Kimberley was not a bank of issue within

the meaning of the Act, and never issued any notes in the province. The Act was not and is not intended to be applicable to notes which have been issued or paid out and put into circulation, and upon which duty had been paid in the colony of the Cape of Good Hope before being used in the said province. The Act by the provision in section 9, sub-section 4, shows that no such returns are to be made except by the head office.

The Solicitor-General (Sir F. Herschell) and *Mr. Finlay*, for the respondent.—The Bank Notes Duty Act of 1864 is applicable to Griqualand West, and in force there by virtue of the proclamation of the 27th of October, 1871. The respondent is not estopped from claiming the return ordered. The appellants have in respect of the circulation of bank notes in Griqualand West rendered themselves liable to make the return ordered.

LORD BLACKBURN delivered the judgment of their Lordships (1):—

This is an appeal by the Oriental Bank Corporation against an order of the High Court of the province of Griqualand West, made upon the application of the respondent, the acting treasurer of the province, whereby the bank was directed to make a return—first, of its own notes outstanding on the 1st of November, 1875, and, secondly, of all bank notes of the Kimberley agency of the Oriental Bank, or any other bank, which on the face of them bear to have been issued at or from any place in Africa, or elsewhere not within the province, and which, since the 1st of November, 1875, have been paid out or put into use and circulation in the province by the bank. The order for this return was based on an Act of Parliament of the Cape colony, No. 6, 1864, "For imposing a Duty upon Bank Notes," with a view to the imposition of the duty chargeable by that Act.

This case has been twice argued at their Lordships' bar.

Two objections, and two only, were urged on behalf of the appellants, either of which would, if established, be suffi-

(1) Lord Blackburn; Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith; and Sir Robert P. Collier.

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cient to show that the order appealed against was wrong. Their Lordships are of opinion that the second of these objections is well founded; and they do not express any opinion upon any other matter. Although on the first objection they give no decision, it must not be inferred that they have formed an opinion upon it adverse to the appellants.

In order, however, to make intelligible the point on which their Lordships express an opinion, a short statement is necessary.

On the 27th of October, 1871, several proclamations were issued by Sir Henry Barkly, then High Commissioner. The most material of these are Nos. 67 and 68, which must be construed together, from which the following are extracts:—

“No. 67, 1871. October 27, 1871.

“Proclamation declaring Waterboer and tribe of Griquas British subjects, and their territory British territory. Boundaries set forth.

“Whereas Captain Nicholas Waterboer, paramount chief of the Griqua people and territory of Griqualand West, with his raad or council, has on behalf of himself and his said people petitioned Her Britannic Majesty Queen Victoria that she would be graciously pleased to accept into her allegiance him, the said Nicholas Waterboer, and his said people, and to declare him and his people to be British subjects, and their territory to be British territory.

“And whereas Her said Majesty, on receiving the said petition, was graciously pleased to signify her assent to the prayer thereof, and to authorise me in her name, as her High Commissioner, to grant the said prayer, and to accept the said allegiance, and to declare the said chief, Nicholas Waterboer, and his said people, to be British subjects, and the territory of the said chief and people to be British territory, conditionally on the Parliament of the colony of the Cape of Good Hope consenting that the said territory shall become part of the colony aforesaid, and undertaking to provide for the government and defence thereof and of the said people.

“And whereas the two Houses of Parliament of the said colony of the Cape of

Good Hope, by addresses, dated respectively the 5th day of August, 1871, and the 8th day of August, 1871, presented to me have communicated to me that they have resolved that, pending the adjustment of certain disputes therein referred to regarding the boundaries of the said territory, and the passing of a law for the annexation of the said territory, therein called the Diamond Fields, to this colony, the said Houses were of opinion, respectively, that I should be requested to adopt such measures as might appear to me to be necessary and practicable for the maintenance of order among certain inhabitants of the said territory engaged in searching for diamonds therein, and in the said resolution termed the diggers, and the other inhabitants of the said territory, as well as for the collection of revenue and the administration of justice.

“And whereas it is necessary, for the purpose of so maintaining order, collecting revenue and administering justice in the said territory, that I should, in Her Majesty's name, grant the prayer of the said chief, Nicholas Waterboer, and his said people, and assume sovereign jurisdiction in and over the said territory.

“Now, therefore, I do hereby proclaim and declare that from and after the publication hereof the said Nicholas Waterboer, and the said tribe of the Griquas of Griqualand West, shall be, and shall be taken to be, for all intents and purposes British subjects, and the territory of or belonging to the said Nicholas Waterboer and the said tribe shall be taken to be British territory, and I hereby require all Her Majesty's subjects in South Africa to take notice of this my proclamation, accordingly.”

“No. 68, 1871. October 27, 1871.

“Proclamation declaring laws and usages of Cape colony as laws for Griqualand West, so far as the same shall not be inapplicable. Quarterly Wine and Spirit Licensing Board vested with the powers of the March Licensing Board in Cape colony. Stamps. Licence duties and fees of office payable as in Cape colony. Cape stamps valid. Recorders' powers as to Resident Magistrates' Courts.

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"Whereas I have, by proclamation of this day's date, No. 67, declared the sovereignty of Her Majesty Queen Victoria over the territory of Griqualand West, as defined by my said proclamation, and it is expedient to make provision for the good government of this said territory pending the passing of a law to annex the same to the colony of the Cape of Good Hope.

"Now, therefore, I do hereby proclaim, declare and make known that, except in so far as I have already proclaimed, or may hereby or hereafter proclaim, to the contrary, the laws and usages of the said colony of the Cape of Good Hope shall be deemed to be the laws of the said territory, so far as the same shall not be inapplicable thereto."

"The laws relating to the sale of wines, malt liquors and spirituous liquors within the said territory shall be the same as the laws of the said colony relating to the same matters, save that the several quarterly licensing boards in the said territory shall at each meeting thereof have the like powers as the licensing boards in the said colony now possess at the February meeting of such boards only.

"All stamp and licence duties and all fees of office now payable in the said colony shall be payable likewise in the said territory as if the same were part of the said colony, and the stamps and fees payable in the Supreme Court and the Court for the Eastern Districts of the Cape of Good Hope shall be payable as near as may be in the High Court of Griqualand in like manner as in the said Supreme Court and Court for the Eastern Districts of the Cape of Good Hope, and all stamps of the said colony shall be deemed likewise to be stamps for the said territory, and shall be valid therein and used as if the said territory were part of the said colony."

The condition attached to the previous authority given by Her Majesty to the High Commissioner, namely, "the Parliament of the colony of the Cape of Good Hope consenting that the said territory should become part of the colony aforesaid, and undertaking to provide for the government and defence thereof and of

the said people," has not been fulfilled to this day. But Her Majesty having been pleased subsequently to ratify the proclamations, they have the same validity as if they had been previously authorised. The argument of the appellant was that the temporary object which was contemplated when the proclamations were issued was very important to be considered in construing the 2nd clause of the proclamation No. 68. And his first objection to the order appealed against was, that the proclamation made for such a temporary object could not be construed as intended to apply to the territory any such Act as the Act for imposing a duty on bank notes, or, indeed, any Acts imposing duties other than those specially mentioned.

Their Lordships, as already stated, do not think it necessary to determine what the true construction of the proclamation is, for they are of opinion that the second objection made to the order must prevail. That objection was that, assuming the Act for imposing a duty upon bank notes to have been validly extended to the province, and to be construed as if the words "province of Griqualand West" were to be read in it instead of "colony of the Cape of Good Hope," that Act originally applied only to banks of issue within the colony—that is, banks issuing within the colony notes of their own, purporting to be issued within the colony, and so (unless expressed to be payable elsewhere) to be payable by them within the colony; and that the Oriental bank, though having a branch at Kimberley, within the province, and there putting in circulation notes issued by it in the colony and payable there, did not issue any notes payable in the province, and so was not liable to make any return.

What the Kimberley branch bank in fact did is thus stated in the affidavit of Mr. Ross, the manager of it:—

"That this agency of the said corporation has never issued its own local notes, or any notes purporting on the face of them to be issued in this province, but has always used the notes of the Oriental Bank, dated and payable in Port Elizabeth, and which notes have in every case been put into circulation and

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have paid bank-note duty in the Cape colony previous to having been used at my agency."

Port Elizabeth is in the Cape colony, not in the province.

The material parts of the Colonial Act are as follows:—

"Whereas the privilege enjoyed by the joint-stock banks of this colony of issuing bank notes is one in regard to which a duty, regulated by the average amount of such notes kept in circulation by each bank, may justly be imposed: Be it enacted by the governor of the Cape of Good Hope, with the advice and consent of the legislative council and House of Assembly thereof, as follows:—

"1. Every joint-stock bank trading as bankers in this colony, and issuing bank notes, shall be bound and obliged to transmit to the treasurer-general of this colony monthly returns of the amount of bank notes in circulation by such banks: provided that for the purpose of this Act the term 'bank notes' shall not include bank post bills.

"2. The first return to be made by every such bank under this Act shall state the amount of the bank notes of such bank outstanding on the last day of September, 1864; and every succeeding return shall state the amount of such notes outstanding on the last day of each succeeding month."

It then prescribes the form of the return:—

4. Imposes a duty "of one pound and ten shillings per centum upon the average issues of each year ending the 31st of December, such average issues to be ascertained by adding together the amount set forth in the several monthly returns of such bank for such year, and by then dividing the result by 12."

Section 5 provides the mode in which an order may be obtained for enforcing the return. It is under this section that the order now appealed against is framed.

"6. If any person or co-partnership, not being a joint-stock bank, shall issue notes payable to bearer, or at sight, or on demand, in which notes the amount for which such notes are made shall not be written, but engraved, printed or litho-

graphed, such person or co-partnership shall come under the provisions of this Act in like manner as if such person or co-partnership were a joint-stock bank."

7 and 8 are not material.

"9. As often as any joint-stock company carrying on business as bankers in this colony, whether their chief seat of business shall be in this colony or elsewhere, shall have in this colony a head office, and one or more branch banks also in this colony, the monthly returns mentioned in the first section of this Act shall be made as follows; that is to say:—

"(1) If the branch bank shall issue its own notes, namely, notes purporting to be issued by or at the place of business of such branch bank, then the returns aforesaid shall be made by such branch bank direct, precisely as if such bank were an independent and unconnected bank and not a branch.

"(2) No such last-mentioned branch bank shall, in calculating its bank notes outstanding, be at liberty to deduct from its circulation any bank notes of its head office, or of any other branch of the same bank, which notes such branch bank may happen to have on hand.

"(3) In like manner, no head office of any bank having one or more branches shall, in calculating its bank notes outstanding, be at liberty to deduct from its circulation any notes of any of its branches, which notes such head office may happen to have on hand.

"(4) Should there be at any time in this colony a bank having a head office and one or more branch banks, which branch bank or banks shall not issue any such notes as are in the first subdivision of this section described, then the returns aforesaid shall not be made by or from the branch bank or banks, but by or from the head office, and shall include the whole outstanding circulation of the said bank, including all its branches.

"10. Every joint-stock bank carrying on business as bankers in this colony shall, in making its monthly returns for the purpose of this Act, include therein all bank notes of the same or any other bank, which notes shall, on the face of them, bear to have been issued at or from any place in Africa, or elsewhere not within

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the limits of this colony, and which notes having come at any time and in any manner into the hands of such joint-stock bank, shall, during the month for which any such return shall be made, have been by such joint-stock bank paid out or put into use or circulation: provided, however, that from and out of such bank notes as aforesaid so to be included as aforesaid may be excepted notes of the governor and company of the Bank of England: provided also that the transmission of any such bank notes as are first aforesaid by any joint-stock bank to the place where such notes were issued, or to any other place beyond the limits of this colony, in a closed cover or parcel, shall not be deemed to be a paying out of such notes or a putting of the same into circulation, so as to require that the bank notes so transmitted shall be included in any such return as aforesaid. And provided, lastly, that the duty imposed by the 4th section of this Act shall be payable upon the amount of all such bank notes as shall, under and by virtue of this section, be included in any monthly return, precisely as if such bank notes so included had been notes of the bank making such return, and issued by it at the place of business of such bank by or from which such return shall be made."

There is much weight in the argument, based on the words of the 2nd section, which require the return to be of "the bank notes of such bank outstanding," on the last day of the month, that the notes must be notes of that bank, issued within the colony, still outstanding; and consequently that the Act can only be meant to apply to those banks which act as banks of issue within the colony, to banks which have such notes.

This argument is strengthened by the terms in which the 6th section is framed; the person who issues (that is, within the colony) notes payable on demand, must mean the person issuing his own notes. If it were not for the 10th section, on which it will be necessary to comment hereafter, it could not be supposed that a private banker who issued no notes of his own became liable to the tax because he paid away, and so put in circu-

lation, notes of other banks, instead of sending them in for collection. And the language of section 9 (which is only material in as far as it throws light on the other sections) points strongly in the same way from the terms in which "its own notes" are defined, as being those purporting to be issued at, and consequently payable at, the place of business of that branch bank, and also from the 2nd and 3rd sub-sections which mark the distinction between its notes on hand in other branches of the same bank, which are not to be deducted, and notes payable at the branch which, when once paid by it, are no longer in circulation until re-issued.

For these reasons, if the Colonial Act had stopped at the end of the 9th section, their Lordships would have had very little doubt that it only applied to banks of issue, issuing within the colony notes payable by themselves there.

But a more difficult question arises, whether the bank is not liable to make returns under the 10th section.

The Kimberley branch of the Oriental Bank has indisputably put into use and circulation bank notes of the Oriental Bank, which, on the face of them, bear to have been issued at Port Elizabeth, a place out of the province. And if it is liable to make a return, it must include these notes in that return. But the 10th section does not, in terms at least, impose any fresh obligation to make returns.

It has been contended that the bank is not within this enactment, and that the description "every joint-stock bank carrying on business as bankers in this colony shall, in making its monthly returns," at the commencement of clause 10, ought, having regard to the context and the rest of the Act, to be construed as referring only to banks pointed at in the earlier sections which were by those sections required to make returns. It was contended that no bank, unless it also issued such notes, was liable to pay duty on the notes of its own or of any other bank that it might put into circulation. The primary object of the Bank Note Duty Act certainly seems to have been to subject banks issuing their own

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local notes (in the sense above mentioned) to duty on the notes they so issued; but it being doubtless foreseen that some banks, besides issuing such notes, might put into circulation notes of their own or of some other bank, which, though not purporting to be issued in the colony, would still become part of its paper currency, the framers of the Act seem to have thought that banks of issue which thus increased the paper currency got an advantage thereby, and should be taxed, and introduced the 10th clause to meet such cases, and to bring within the scope of the Act all notes, except Bank of England notes, thus put into circulation by banks so carrying on business in the colony. The question is, whether, though the description at the commencement of the 10th clause is "every joint-stock bank carrying on business as bankers in this colony," without the words "and issuing bank notes" found in section 1, that description is not by implication confined to the banks pointed at in section 1.

The Legislature certainly seems, in the earlier provisions of the Act, to have had in its view banks of issue issuing local notes in the sense above mentioned, and to have contemplated the putting forth of the notes described in section 10, as an addition or supplement to such issue. The form of return given in the Act plainly indicates that this was the state of things in the contemplation of the Legislature; for the form assumes that there would first be a return by a bank of its own local issue, and then provides, by way of addition thereto, for a return of the notes described in section 10, if any such notes should have been issued. It is true that this form is to be followed in substance only; but section 10 itself implies an antecedent liability upon a bank to make a return of its local notes, to which the return under that section would be supplemental and additional. The words of the 10th section are: "Every joint-stock bank carrying on business as bankers in this colony shall, in making its monthly returns for the purpose of this Act, include therein" the bank notes described in that section. From this language, as well as from the

form of return given by the Act, it may be inferred that the Legislature did not contemplate the case of a bank putting out such last-mentioned notes only, and so did not provide for a separate and independent return of such notes. Although therefore the 10th section enacts that the duty imposed by the 4th section shall be payable upon such notes when included in any return, "precisely as if such bank notes so included had been notes of the bank making such return, and issued by it at the place of business of such bank by or from which such return shall be made," yet it is only where the obligation to make returns exists that the duty is imposed, and, as already stated, this obligation does not seem to have been contemplated, nor created, except in the case of banks issuing their own local notes. The position of a bank putting forth only such notes as are described in section 10, without any of its own local notes, would thus seem to be unprovided for by this Act.

Their Lordships, therefore, having regard to the rule that the intention to impose a charge on the subject must be shewn by clear and unambiguous language, are unable to say that the obligation of the bank to make the return applied for, and its consequent liability to pay duty on the notes put into circulation by its Kimberley branch, are so clearly and explicitly imposed by the present Act as to satisfy this rule. This view of the Act appears to have been for a long time entertained and acted upon by the officers of the Government of the province, for having made a claim for duty they expressly withdrew it, renewing it only after an interval of two years.

This limited operation of the Act undoubtedly entails the consequence pointed out by the learned Judge below, namely, that duty will be payable upon all notes described in section 10, when put forth by banks which issue any notes purporting to be locally issued, however few; whilst it will not be payable at all by banks which, not issuing notes purporting to be locally issued, put into circulation within the province their own notes, issued in London or elsewhere, however large the amount so put into

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circulation may be. But if the Legislature, from want of foresight or for any other reason, has omitted to provide for such a case, it is the province of the Legislature itself, and not of the Courts, to supply the omission.

In the result, their Lordships will humbly advise Her Majesty to discharge the order of the High Court, and in lieu thereof to direct that the application of the respondent be dismissed. The appellant will have the costs of the appeal to Her Majesty.

Solicitors—Murray, Hutchins & Stirling, for appellants; Bircham & Co., for respondent.

1880. { JOSEPH PITTS (*appellant*) v.
Nov. 20. { EVERARD LA FONTAINE (*respondent*).

Judicial Committee—Judgment—Order in Council—Effect of—Bankruptcy Act, 1869, s. 20—Trustee—Costs—Personal Liability.

When a decision of the Judicial Committee has been reported to the Queen, and has been sanctioned and embodied in an order of council, it becomes a decree or order of the final Court of Appeal, and it is the duty of every subordinate tribunal to whom the order is addressed to carry it into execution.

Under the Bankruptcy Act, 1869, s. 20, a trustee may be made personally liable for costs.

This was a petition by the appellant praying that a certain order in council of the 19th of May, 1880, might be peremptorily ordered to be carried out by the respondent, the trustee in liquidation of the firm of Morton & Co.

The petition stated that by an order in council made on the appeal of the petitioner against certain orders of the Supreme Court at Constantinople, dated the 19th of May, 1880, it was among other things declared that certain orders of that Court dated the 18th of July,

1874, and the 27th of March, 1878, were void and of no effect against the petitioner, and it was by the said order in council ordered that the orders of the Supreme Court should be set aside so far as they affected the petitioner's interest in certain property situate in the island of Prinkepo within the limits of the Ottoman Empire; and it was further ordered that all costs which might have been paid under the orders of the Supreme Court should be repaid to the petitioner, and that the respondent should pay to the petitioner all such costs as were incurred by him in the Consular Court, and the respondent was ordered to pay to the petitioner the costs of the appeal.

That in pursuance of the order of the 19th of May, 1880, the costs were taxed by the Consular Court at the sum of 287*l.* That the costs by the order of the 19th of May, 1880, directed to be paid, not having been paid, the petitioner on the 12th of August, 1880, moved the Consular Court for execution to issue against the respondent for payment of the sum of 411*l.* 12*s.* 4*d.*, being the taxed costs of the appeal, and on the 1st day of October, 1880, the petitioner moved the Consular Court for execution to issue against the respondent for payment of the sum of 287*l.*, the amount of the costs in the Consular Court. That on the 2nd of October, 1880, the two rules obtained by the petitioner were argued, and it was then contended on behalf of the respondent that, notwithstanding the order in council of the 19th of May, 1880, the respondent was liable to pay costs, only so far as he had assets in his hands of the firm of Morton & Co., and that he was not personally liable for the payment of costs. It was argued on behalf of the respondent that he had acted under the direction of the Consular Court in obtaining the orders which were set aside, and that under the 20th section of the Bankruptcy Act, 1869, he was absolved from any personal liability.

That the Consular Court ordered that the rule obtained on the 12th of August, 1880, should be discharged, and that only the sum of 229*l.* 0*s.* 6*d.*, the balance of the funds in the hands of the respondent, arising from the liquidation of the firm

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of Morton & Co., should be paid to the petitioner. The petition then stated that a sum of 229*l.* 0*s.* 6*d.* had been paid to the petitioner, but that he had been unable to obtain any further payment whatsoever.

The petition then prayed that Her Majesty would direct that the liability of the respondent should not be limited to the amount of the assets in his hands as trustee under the liquidation of Morton & Co., but that the respondent should be ordered to pay out of his own moneys the balance of the costs due under the order in council of the 19th of May.

Mr. Benjamin and *Mr. Hornell*, for the petitioner.

Mr. Lumley Smith and *Mr. Safford*, for the respondent.

SIR JAMES W. COLVILLE delivered the judgment of their Lordships (1):—

This is an application for a peremptory order on the Consular Court at Constantinople to carry into execution the order in council of the 19th of May, 1880, so far as it directed *Mr. La Fontaine*, the respondent, to pay certain costs to *Mr. Pitts*, the appellant. In the course of the argument on the application to the Consular Court for the payment of these costs, a somewhat irregular discussion as to the nature of the order, and the authority from which it emanated, seems to have taken place. On this point it suffices to say that when a decision of this board has been reported to Her Majesty, and has been sanctioned and embodied in an order of council, it becomes the decree or order of the final Court of Appeal—the House of Lords, which was brought into the discussion, having no jurisdiction whatever in the subject-matter of it—and that it is the duty of every subordinate tribunal to whom the order is addressed to carry it into execution.

This, which is a first principle, their Lordships cannot presume that the Judge of the Consular Court intended in any way wilfully to violate; and the first question

which arises is, whether there is really any ambiguity in the words of the order. These are: "And it is hereby ordered that the respondent do pay to the appellant all such costs as were incurred in the Consular Court by him or his wife, the defendant *Ellen Jani Pitts*, of and incidental to all the orders under appeal, and the costs of opposing the rules on which such orders were made, except the costs of the rule of the 7th of January, and the order of the 5th of February, 1879, made thereon, and such costs are to be taxed by the Consular Court; and the respondent is likewise to pay to the appellant the sum of 411*l.* 2*s.* 4*d.* sterling for the costs of this appeal." Nothing can be clearer upon the face of the order than that it is an order in the usual form against the respondent personally to pay those costs.

This being so, the next question that arises is, whether there is any ground on which the action of the Judge of the Consular Court in qualifying and varying the directions of the order in council can be justified. His *ratio decidendi* seems to have been that inasmuch as the proceedings were taken, as it is alleged, with the sanction and at the instance of Sir Philip Francis, the former Judge of the Consular Court, the provisions of the Bankruptcy Act of 1869, and in particular the 20th section of that statute, make it so irregular and contrary to law to order the respondent personally to pay costs, that such an order, however plain its terms, must be presumed to mean that the costs were to be paid out of the estate, and so far only as the estate might extend.

With respect to this suggestion of the effect of directions or authority given by Sir Philip Francis, it appears to their Lordships that any such sanction, if relied upon, ought to have been regularly proved by the production of an order of the Court. Here we have nothing in the way of proof but loose affidavits of conversations, or alleged conversations, between Sir Philip Francis, the then Judge of the Court, and the counsel for the respondent, and a dragoman of the embassy. Again, all that appears upon those affidavits is that Sir Philip Francis

(1) Sir James W. Colville; Sir Montague E. Smith; Sir Robert P. Collier.

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was regularly or irregularly consulted by the counsel for the respondent as to what proceedings it would be proper to take in order to realise the bankrupt's interest in the mill in question, and that Sir Philip Francis had previously consulted Mr. Constantinidis, the dragoman of the embassy, upon that point also; and that the result was that Sir Philip Francis directed Mr. Nasmyth, the counsel for the respondent, on his behalf, "to bring an action in this Honourable Court against the said Ellen Jani Pitts for the sale of the said property under the supervision of this Honourable Court." This only goes to shew a sanction of the institution of proceedings in the Consular Court for the realisation of the insolvents' interest in the mill; and up to that point the decision of this board was, that though there might have been some irregularity in the proceedings in so far as they were taken against Ellen Jani Pitts without joining her husband, that technical objection might be waived, and that the sale which took place under the order of the Court of the bankrupts' interest was to be treated as good, and was to be upheld. But it appeared that the sale had been followed by a series of irregular proceedings against Mr. Pitts, who was not a party to the suit, the object of which was to turn out him who was a partner in this mill with the bankrupts, and to exclude him from his share in the mill. This tribunal held that all these latter proceedings were irregular and could not be upheld; and it is quite clear that no sanction is shewn to have been given by Sir Philip Francis to these particular proceedings, which all took place some time after his death. If, then, the sanction of Sir Philip Francis could have availed anything to the respondent on this occasion, the proof of it wholly fails.

Again, can it be said that, under the Bankruptcy Act of 1869 (the 20th section is the section on which the learned Judge principally relied), a trustee under that Act can in no case be made personally liable for costs? It seems to their Lordships that the law, as might reasonably be expected, is the other way. They have been referred to two cases. One

is *Ex parte Angerstein*; in the matter of *Angerstein* (2), and establishes the general rule. The Court had there ordered that the trustee should pay to the appellant his costs of the application to the registrar, which costs the trustee might recover from the estate of the bankrupt. It was suggested that there was scarcely any estate, and that the effect of their Lordships' order would be that the trustee would have to pay a great part of the costs personally. But Lord Justice Mellish said, "It is quite right that the order should be in that form. The reason for ordering the trustee to pay costs is that applications of this kind to the Court of Bankruptcy are in substitution for actions at law. In an action at law a trustee in bankruptcy would be liable in the same way as any other plaintiff. In a case where a trustee makes an application the success of which is doubtful, he ought, before making it, to get from the creditors an indemnity against the costs if he knows that there are no assets out of which they can be paid. I see no difference between the case of an official liquidator and a trustee in bankruptcy. With regard to the former, we have already laid down the rule that he must pay the costs if he fails in an application." In every case of that kind, of course the question may arise whether the trustee, having had to pay costs to the party aggrieved by an unsuccessful and improper claim, may not, if he has acted *bona fide*, have a case for recouping himself out of the bankrupt estate if there are funds. That is a question to be determined in the Court of Bankruptcy in the administration of the bankrupt estate. Any order of their Lordships here against Mr. La Fontaine would, of course, leave that question open. It is a question with which their Lordships have nothing to do, and on which they express no opinion; but it is clear that, whatever Mr. La Fontaine's right in that respect may be, it affords no reason for depriving Mr. Pitts of that which the order gave him, and gave him consistently with general law.

The other case referred to was that of (2) 43 Law J. Rep. Bankr. 131; Law Rep. 9 Chanc. App. 479.

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Ex parte Stapleton; in *re Nuihan* (3). In that case Mr. Stapleton had contracted to sell a cargo to the liquidating debtor. Before the cargo was delivered the liquidating debtor became insolvent. He had given acceptances which were worth nothing for the goods, and Stapleton claimed the right of repudiating the contract, making a resale, and then coming in under the bankruptcy to prove the loss upon that resale. The registrar rejected his proof, and Mr. Stapleton then appealed to the Court. All that bears upon this case is, that upon that appeal the appeal was allowed with costs; but Lord Justice James says, "The order will be for the payment of costs out of the estate, not by the trustee personally. The trustee is not the appellant." This authority does not imply that there is any inflexible rule of Court that a trustee should not be personally ordered to pay costs; although under the circumstances, the estate being possibly fully adequate for the purpose, his costs were directed to come out of the estate. And it is to be observed that the form of the order shews that when it is intended to qualify the ordinary liability of the trustee in bankruptcy to pay costs, such qualification is expressly mentioned in the order.

Lastly, if we travel out of the order in council in order to learn from the judgment of this board with what intention the order for the payment of costs was made, we find this passage: "It appears to their Lordships that Constantinidis, instead of litigating these questions fairly, has sought to get them indirectly determined in his favour by the proceedings taken in the Consular Court in the name and at the instance of the respondent; that the respondent has, from some motive or another, become his instrument and lent himself to that course of action, and that the Court has improperly sanctioned it by the orders in question."

It is therefore perfectly clear that if there was sufficient ambiguity in the terms of the order to raise a question as to what the board intended, the board did intend to make Mr. La Fontaine personally responsible for the costs.

It is very possible that, as stated in the affidavits, Mr. La Fontaine may be a very respectable person, and that he may have acted *bona fide* though under very bad advice; but that is his misfortune, and can form no ground for depriving the applicant of those costs to which he is entitled.

Their Lordships will, therefore, humbly recommend Her Majesty to make in the usual way a peremptory order for the payment of these costs, and they think that the applicant is also entitled to the costs of the present application.

Solicitors—Willoughby & Cox, for petitioner;
T. Russel Kent, for respondent.

1880. } CHARLES SIMMONS (*appellant*) v.
Nov. 26. } SAMUEL MITCHELL (*respondent*).

Windward Islands—Slander—Innuendo
—*Prefatory Statement—Doubtful Meaning*
—*Opinion of Witness—Question for the Jury.*

In an action of slander, if the declaration contain innuendoes, a plaintiff cannot substitute for them a prefatory averment in the same declaration imputing motives to the defendant.

If words complained of have two meanings, one imputing suspicion, and the other guilt, the question in which sense the words were used is for the jury, and a witness to whom the words were addressed cannot be asked in what sense he understood them.

This was an appeal from a judgment of the Court of Appeal for the Windward Islands.

The appellant was a merchant and a Justice of the peace in the Island of Grenada, and the respondent was the clerk of the Crown in the island.

The declaration in the action charged that the respondent had falsely and maliciously spoken and published of the appellant the false, scandalous, malicious and defamatory words following; that is to say: "People who go to the Secretary

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of State had better see that their characters are clear, for your brother" (meaning the appellant) "lies here" (meaning at the office of the Colonial Secretary of the said island and clerk of the Crown) "under suspicion of having murdered a man named Emanuel Vancrossen, at the Spout, some years ago;" and also the words following; that is to say: "Have you not heard that Charles Simmons" (meaning the appellant) "is suspected of having murdered one Vancrossen, his brother-in-law? A proclamation offering a reward for the apprehension of the murderer is now in my office, and there is only one link wanting to complete the case;" and also the words following; that is to say: "Some years ago Emanuel Vancrossen was murdered, and his body was found at American Point. Charles Simmons was the person suspected of having committed the deed. I" (meaning the respondent) "have spoken to Orgias and Sheriff" (meaning Pantin Orgias and William Anthony Musgrave Sheriff, her Majesty's Attorney-General for the said Island of Grenada) "about it."

The respondent pleaded "not guilty," and issue was joined.

The action was tried before the Chief Justice and a special jury.

At the trial, the words alleged in the declaration were proved to have been spoken by the respondent to the appellant's brother and to Orgias, and to a person of the name of Beckwith, and it was proved that the respondent was the clerk of the Crown for the island, and had in his custody the records of judicial proceedings and inquests. At the close of the case for the plaintiff it was submitted on the part of the defendant that the appellant should be nonsuited, and that he had made out no case, on the ground that the alleged slanders amounted at most to words of mere suspicion.

The learned Judge having intimated his intention to direct a nonsuit on this ground, and such nonsuit having been declined on behalf of the plaintiff, the learned Judge directed a verdict to be entered for the defendant.

A rule *nisi* for a new trial, which was afterwards granted by the same learned

Judge, was discharged by him with costs, and on appeal to the Court of Appeal for the Windward Islands this judgment was confirmed.

From this judgment the appeal was brought.

Mr. F. M. White and *Mr. McLeod*, for the appellant.—The declaration discloses a good cause of action. If the declaration did not disclose a cause of action the defendant should have demurred. The words proved are not words of mere suspicion, but impute to the appellant that he has been guilty of a crime. If the words be words of mere suspicion, it is a question for the jury whether or not the respondent, when he used them, intended in fact to impute to the appellant the actual commission of the crime. They referred to *Lumby v. Allday* (1), *Roberts v. Camden* (2), *The Dublin, Wicklow and Wexford Railway Company v. Slattery* (3).

Mr. J. J. Fitzgerald, for the respondent.—The alleged slanders were words of mere suspicion, and do not convey any positive imputation or charge of any indictable offence. They were not spoken in relation to a trade or calling. The words were therefore not actionable. It has been expressly decided that words imputing a mere suspicion of felony are not actionable. He referred to *Tozer v. Mashford* (4), *Hunt v. Goodlaks* (5), *Roscoe's Evidence*, 12th ed. 715, *Addison on Torts*, 4th ed. 798.

SIR ROBERT P. COLLIER delivered the judgment of their Lordships (6).

In this case, an action for slander was brought by Mr. Charles Simmons, the appellant, against Mr. Mitchell, the respondent, in the Supreme Court of Grenada. The Chief Justice, who tried the case, having offered the plaintiff a nonsuit, which he declined, directed the jury to find a verdict for the defendant. A rule

(1) 1 Cr. & J. 301.

(2) 9 East, 93.

(3) Law Rep. 3 App. Cas. 1155.

(4) 20 Law J. Rep. Exch. 225; 1 Exch. Rep. 539.

(5) 43 Law J. Rep. C.P. 54.

(6) Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith; and Sir Robert P. Collier.

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having been granted to shew cause why that verdict for the defendant should not be set aside and a new trial had, the Chief Justice adhered to his ruling and discharged the rule. Whereupon there was an appeal to the Appellate Court of the Windward Islands, consisting of four Chief Justices. The Appellate Court was equally divided, and therefore the judgment of the Chief Justice stood discharging the rule for a new trial. These are the circumstances under which this appeal comes before their Lordships.

The declaration was in respect of words, alleged to be slanderous, uttered by the defendant, Samuel Mitchell, who is described as the clerk of the Crown, and having reference to the plaintiff, who is a merchant in Grenada. The declaration contains a prefatory statement that the defendant, "being clerk of the Crown, and, as such, having the control and custody of depositions and other proceedings taken at the inquisitions of coroners in and for the said island of Grenada, and contriving and intending to injure the plaintiff, and to cause it to be believed that he had been guilty of murder, and to subject him to the pains and penalties by the law made and provided against and inflicted upon persons guilty thereof," used the words complained of. The declaration contains four counts, and this prefatory averment is applicable to each of them. The words set out in the first count are these: "People who go to the Secretary of State had better see that their characters are clear, for your brother" (meaning the plaintiff)—the words being addressed to the brother of the plaintiff—"lies here" (meaning the office or place of business of the Colonial Secretary of the said island and clerk of the Crown) "under suspicion of having murdered a man named Emanuel Vancrossen, at the Spout, some years ago"—and this is the innuendo—"meaning thereby that there was among the records of the said clerk of the Crown some documentary evidence or charge implicating the plaintiff with the murder of the said Emanuel Vancrossen at the Spout, and which warranted the defendant in saying so." The second count alleges the use of the same words with a somewhat different innuendo,

the innuendo being, "meaning thereby that there was some evidence in the said office of the clerk of the Crown that the plaintiff had murdered Vancrossen." The third count alleges the speaking of these words: "Haven't you" (meaning the person with whom the defendant then conversed) "heard that Charles Simmons" (meaning the plaintiff) "is suspected of having murdered one Vancrossen, his brother-in-law? A proclamation offering a reward for the apprehension of the murderer is now in my office" (meaning the office of the clerk of the Crown), "and there is only one link wanting to complete the case"—and the innuendo is in these terms, "meaning thereby that there was some evidence in the office of clerk of the Crown, and that there was required only one link in the chain of such evidence to put the plaintiff upon his trial for the alleged murder of the said Emanuel Vancrossen." There is a fourth count alleging the speaking of these words: "Some years ago Emanuel Vancrossen was murdered, and his body was found at American Point" (meaning a place usually known as the Spout, situate on the northern shore of the lagoon adjacent to the town of Saint George, in Grenada aforesaid). And upon being asked the question, "What about it?" by the person with whom the defendant then conversed, the defendant then answered, "Charles Simmons was the person suspected of having committed the deed" (meaning the murder of the said Emanuel Vancrossen). "I" (meaning the defendant) "have spoken to Orgias and Sheriff" (meaning the doctor and the Attorney-General of the island) "about it." Such is the declaration, to which the plea is "Not guilty" only.

It is to be observed that the plaintiff does not in any of his innuendoes declare that the words of which he complains were spoken with the intention of imputing to him a felony; that is to say, the crime of murder. The innuendoes do not purport to enlarge the meaning of the words, and if the words themselves convey only suspicion the innuendoes do no more.

It has been argued, on behalf of the defendant, that since the Common Law

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Procedure Act, s. 61, has been passed, these innuendoes may be rejected and the prefatory averments may be substituted for them and treated as the real innuendoes; that is to say, that the prefatory words in the present case, "contriving to cause it to be believed that the plaintiff had been guilty of murder," may be treated as explaining the meaning of the slanderous words set out in each of the counts. But their Lordships think that, there being innuendoes in the declaration whereby the plaintiff undertakes to explain the meaning of the words spoken, he cannot substitute for them a prefatory averment which does not profess to give the meaning of the words spoken, but only the motives of the defendant.

But it has been further argued that these innuendoes may now be all rejected, and the declaration may be treated as if it contained none; and that being so, that the words complained of in the declaration are capable of two meanings in their fair construction: one, that the defendant meant that the plaintiff was suspected of having committed a felony; the other, that he had committed the felony, and therefore that the question of their true meaning ought to have been left to the jury. It has not been disputed that in point of law words merely conveying suspicion will not sustain an action for slander.

With respect to the first, second and fourth counts, their Lordships have had no difficulty. The words in those counts convey in their natural and ordinary sense suspicion, and suspicion only, and, according to the law of this country, with respect to the policy of which we have nothing to do, would not support an action of slander. Their Lordships have had more doubt with respect to the third count, wherein it is said that the defendant used these expressions: "Haven't you heard that Charles Simmons is suspected of having murdered one Vancrossen, his brother-in-law? A proclamation offering a reward for the apprehension is in our office, and there is only one link wanting to complete the case." It has been argued with some force that these words are capable of

bearing the meaning that the plaintiff is guilty of murder, but that the technical proof against him is not wholly complete. Undoubtedly, if the words had admitted fairly of two meanings, the one being an imputation of suspicion only, the other of guilt, it would have been proper to leave to the jury the sense in which they were uttered; but their Lordships have come to the conclusion that, taken in their natural sense, and without a forced or strained construction, they do not contain these two meanings, but only one, namely, that there was a case of strong suspicion, but of suspicion only, against the plaintiff, and are therefore unable to say that the learned Judge was wrong in withdrawing the case from the jury. They have further to observe that, even if the learned Judge had left the case to the jury, a finding of the jury that the words imputed actual guilt would not have been satisfactory, and their Lordships would have deemed it their duty to send the case back for a new trial. Their Lordships observe, indeed, that, according to the judgment of two of the learned Judges, the principal stress in the argument of the counsel of the plaintiff was laid upon an answer given by William Simmons, the brother of the plaintiff, to a question put to him in cross-examination, that he regarded the words as an imputation of the crime of murder; but their Lordships are of opinion that such a statement by a witness without any proof of surrounding circumstances or conduct leading to the inference which the witness drew that the words had some meaning different from their ordinary meaning, was not evidence on which the jury would have been justified in acting. In the case of *Daines v. Hartley* (7) it was expressly ruled in the Court of Exchequer that a witness could not be asked with respect to spoken words in a slander case, "What did you understand by those words?"

For these reasons their Lordships are of opinion that the order of the learned Chief Justice discharging the rule for a new trial was right, and they will humbly advise Her Majesty to make that order

(7) 3 Exch. Rep. 200; 18 Law J. Rep. Exch. 81.

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which the Court of Appeal of Grenada ought to have made; that is to say, an order affirming the judgment of the Chief Justice; but, considering all the circumstances of the case, and that the Court of Appeal has given no costs of the appeal, their Lordships are of opinion that in this case the appeal should be dismissed without costs.

Solicitors—Stocken & Jupp, for appellant;
Greig & Meikle, for respondent.

1880. { THE ATTORNEY-GENERAL OF BRITISH HONDURAS (*appellant*) v.
Nov. 20. { JOHN BRISTOWE AND CHARLES THOMPSON HUNTER (*respondents*).

British Honduras—Crown Grant—Effect of Sovereignty of the Crown—Proclamation of Annexation—Limitation.

Grants of land in a colony by the Crown afford ample evidence that the Crown has assumed territorial dominion in such colony, and the fact that a formal proclamation of annexation was not made till long after such grants does not affect such evidence.

Title to land in a colony acquired as against the Crown by sixty years' adverse possession.

A testator having under a treaty the right or privilege of occupying a definite parcel of land for the purpose of cutting timber thereon, by his will devised all his "effects":—

Held, that such right or privilege passed to his devisees.

This was an appeal from a judgment of the Supreme Court of British Honduras.

The proceedings commenced by an information of intrusion brought by the appellant, as Attorney-General, on behalf of the Crown, against the respondents.

By such information the appellant sought to have the respondent Hunter removed from certain Crown lands in the colony of British Honduras, on which he

had intruded, and which had formerly been intruded on by, and to which the said Hunter claimed title by conveyance from, the respondent Bristowe. The lands in question were described as part of the mahogany and logwood work of one James Grant, and known as "Grant's Work."

The respondents by their answer alleged by way of defence that the Crown was never seised of the land in question, because British Honduras did not become a colony of the United Kingdom until 1862; that at that time the Crown's prerogative could not displace or prejudice the rights then vested in original occupiers, grantees and those claiming under them, and that the land in question had been located before the British Government was established in Honduras.

The information was heard by the Chief Justice, who found the following facts to have been proved:—

That James Grant, of "the Bay of Honduras," by his last will and testament, bearing date the 30th of January, 1779, *inter alia* bequeathed to his negro slaves as a class, whom he thereby manumitted and set free, and to their heirs and assigns, all his "effects" of what kind soever he might have in the Bay of Honduras, which property so devised and bequeathed comprehended an estate called "Grant's Work," situated in Honduras, a portion of which estate formed the subject of the present action. That after the death of James Grant his devisees, under the captaincy of one of their number named Cudjoe, entered into possession as joint tenants of the property so bequeathed to them by the testator. That at that time this country, which had since been constituted a British colony under the name of British Honduras, was only a settlement within the dominion of the King of Spain, whose rights of sovereignty were expressly reserved in the treaties which were entered into between Great Britain and that country in 1783 and 1786. That in 1798 the Spanish forces, having been defeated by the settlers, withdrew from Honduras, and did not afterwards return or make any attempt to recover their lost possessions; and the learned Judge found, that

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by this relinquishment on the part of Spain of all exercise or assertion of dominion within the settlement of Honduras, the qualified rights of the settlers as they existed under the treaties were, by virtue of continued occupancy and long possession, converted into and became merged in the higher and more ample title of estates in fee-simple. That the Crown did not acquire any territorial right of sovereignty over the settlement until the 12th of May, 1862, when it was declared and proclaimed to be a colony of Great Britain. That the rights of the Crown were acquired without prejudice to any pre-existing rights of property which Her Majesty's subjects had possessed. That at the date of the proclamation of the 12th of May, 1862, the devisees under the will of the testator were in the lawful possession of "Grant's Work," and continued to be so until 1870, when they conveyed a portion of the estate to the respondent Bristowe, who sold a portion of "Grant's Work" to the respondent Hunter.

From this judgment the appeal was brought.

The Solicitor-General (Sir F. Herschell) and Mr. Beaumont, for the appellant.—The Crown is entitled as of right to all land in a British colony which has not been granted by the Crown. The land claimed by the information has not been so granted. The respondents could not acquire any right by adverse possession.

Mr. H. F. Bristowe and Mr. Leach, for the respondents.—The Crown's claim was based on the Crown Lands Ordinance, 1872, s. 58. That section does not apply to the land in question. There is evidence of a grant of the land in question, prior to the year 1817, as required by section 35 of that Ordinance.

SIR MONTAGUE SMITH delivered the judgment of their Lordships (1):—

This appeal arises in the case of an information of intrusion filed by the Attorney-General of the colony of British Honduras to oust the two defendants, Mr. Hunter and Mr. Bristowe, from a

tract of land in the colony which has acquired the name of "Grant's Work," and is so called in the information. The information alleged that the Queen was seised of the land in right of her Crown, and that the defendant Bristowe had claimed possession under a conveyance made to him in 1870, and had subsequently conveyed the land to the defendant Hunter. The answer of the defendants denied the title of the Crown, and also alleged a title derived from the devisees of the will of one James Grant, which had passed to Bristowe, and from him to Hunter.

In the view their Lordships take of the case it will not be necessary to go into a wide field of discussion. It will, however, be necessary before stating the facts relating to the land in dispute to make a short reference to the history of the colony.

The country which now forms British Honduras was one of the Spanish possessions in America, and formed part of the province of Yucatan. It does not appear to have been inhabited by the Spaniards; but the English, principally from Jamaica, resorted to it for the purpose of cutting the valuable woods which its forests contained. They began to settle in Honduras for this purpose about the year 1759, and it seems they erected a fort there. Soon afterwards war broke out between England and Spain, and the treaty of 1763, made on the conclusion of it, contained the following provision with respect to Honduras. The 17th section of the treaty is as follows: "His Britannic Majesty shall cause to be demolished all the fortifications which his subjects shall have erected in the Bay of Honduras and other places in the territory of Spain in that part of the world four months after the ratification of the present treaty, and His Catholic Majesty shall not permit His Britannic Majesty's subjects or their workmen to be disturbed or molested under any pretence whatsoever in the said places in their occupation of cutting, loading and carrying away logwood, and for this purpose they may build without hindrance and occupy without interruption the houses and magazines which are necessary for them, for their

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families and for their effects; and His Catholic Majesty assures to them by this article the full enjoyment of those advantages and powers on the Spanish coasts and territories as above stipulated immediately after the ratification of the present treaty." In 1779 another war between England and Spain arose, and the English settlers were driven from Honduras and retired to the Mosquito coast. At the conclusion of that war these settlers appear to have returned to Honduras; and the Treaty of Versailles, of the 3rd of September, 1783, contained, amongst other things which it is not necessary to quote, this stipulation with regard to the cutting of logwood: "Commissaires on either side shall fix on convenient places in the territory above marked out, in order that His Britannic Majesty's subjects employed in the felling of logwood may without interruption build thereon houses and magazines necessary for themselves, their families and effects; and His Catholic Majesty assures to them the enjoyment of all that is expressed in this present article, provided that these stipulations shall not be considered as derogating in anywise from his rights of sovereignty."

The last treaty between the two countries relating to Honduras is the Treaty of London of 1786, which enlarged the privileges of the English settlers, the third section of which is as follows: "Although no other advantages have hitherto been in question except that of cutting wood for dyeing, yet His Catholic Majesty, as a greater proof of his disposition to oblige the King of Great Britain, will grant to the English the liberty of cutting all other wood, without even excepting mahogany, as well as gathering all the fruits or produce of the earth, purely natural and uncultivated, which may, besides being carried away in their natural state, become an object of utility or of commerce, whether for food or for manufactures; but it is expressly agreed that this stipulation is never to be used as a pretext for establishing in that country any plantation of sugar, coffee, cocoa or other like articles, or any fabric or manufacture by means of mills or other machines whatsoever (this restriction,

however, does not regard the use of saw-mills for cutting or otherwise preparing the wood); since all the lands in question being indisputably acknowledged to belong of right to the Crown of Spain, no settlements of that kind or the population which would follow could be allowed." This treaty considerably enlarged the privileges of the English settlers, for, whereas the privilege granted by the former treaties was confined to the cutting of logwood only, this last treaty conferred upon them the liberty of cutting all woods, not excepting mahogany, and of taking all the natural products of the soil.

We now come to an important period, namely, the year 1798. In that year, during the war which commenced in 1796, an attack was made by the Spanish forces on the English settlers, which was repulsed, and the Spaniards withdrew from the territory. There appears to be no trace of their having re-occupied it. Down to this time the sovereignty of the territory had undoubtedly remained in the Crown of Spain; but no future attempt was made by the Spanish Crown to restore its authority, and its dominion seems to have been tacitly abandoned. The exact time when the Spanish Government can be said to have finally relinquished the territory, and the time when the British Crown assumed territorial sovereignty over it, are, as the Solicitor-General, who argued the case for the Crown, admitted, both undefined. There certainly seems to have been an interval between the abandonment of Spanish and the assumption of British sovereignty, though the length of that interval cannot be determined.

During the time when the country was unquestionably under Spanish dominion, a superintendent was appointed by the English Crown. Various powers were also conferred by it upon the English settlers, and amongst them the right of granting probate of testamentary documents. The country was formally declared to be a British colony, and formally annexed to the British dominions, by a proclamation of Her Majesty, dated on the 12th of May, 1862. The learned Chief Justice was of opinion that the

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Crown had not acquired or assumed territorial sovereignty in Honduras until this date. Their Lordships cannot concur in this view. Without going into the various acts previously done or exercised by the Crown with regard to this colony, or attempting to fix the precise date when the territorial sovereignty was first assumed, it is sufficient for the decision of this case to say that the fact, which is fully established, that grants of lands were made by the Crown as early as the year 1817, affords ample evidence that in that year at least the Crown had assumed territorial dominion in Honduras.

The facts which more immediately relate to the land in dispute may now be referred to. It seems that the early settlers were governed by rules passed by assemblies of the whole body, and that magistrates were elected to enforce the observance of these rules, and generally to administer justice. Amongst those rules were regulations for allotting plots of land to the settlers, which acquired the name of "locations." A compilation called the "Burnaby laws" contains a series of rules regulating these locations, which, amongst other things, provide that they shall be recorded. In the view their Lordships take of this case they do not think it necessary, for the purpose of their decision, to enter upon a discussion of this code. "Grant's Work" no doubt had its origin in what was called by the settlers a location—whether originally made in conformity with Burnaby's code or not—which belonged to one James Grant. There can be no doubt, upon the evidence and the findings of the Chief Justice, that Grant had an allotment of land with defined boundaries—whether properly called a location or not—on which he exercised the right of cutting logwood, which at the time when Grant lived was the only right which the Spanish authorities had allowed. The fact that Grant had a number of slaves belonging to him affords a strong presumption that he had a location, for in his time cutting timber was the only occupation in which slaves could have been employed in Honduras.

Grant's will is dated on the 30th of January, 1779. It is headed "Bay Hon-

duras," and Grant is described as "of the aforesaid Bay, gentleman." After referring to the iniquity of slavery, and the gift of several legacies, the will contains this passage: "And as my negroes have behaved faithfully to me, I therefore immediately after my decease do manumit and set everyone of them, their issue, offspring and increase, free from all manner of labour or service whatsoever, yet subject to the aforesaid legacies, which I think may be paid and discharged in four years after my decease; and in order to enable them to pay off the same I leave them and their heirs and assigns all my effects, of what kind soever, I may have in the Bay Honduras, money in Great Britain or elsewhere (my lands and effects in Jamaica excepted)." It has been argued that the word "effects" would not carry "Grant's Work," if that were to be treated as landed property; and further that, the testator himself not having mentioned the "Work," it may be presumed that it was not intended to pass by the will. Their Lordships think that the word "effects" would pass land; and that word is certainly sufficient to pass that which at the time he made his will Grant alone had, namely, the privilege under the treaty with the Spanish Government of cutting logwood on a definite piece of land which, under some arrangement with his brother settlers, had been allotted to him. As to his intention to give the "Work" to his slaves, the whole contents of the will leave no room for doubt. Then the will goes on, "And as no community can subsist without regulations, I would have the following to be strictly kept." The will then contains various regulations for the government of the slaves as a community, to many of which it is not necessary to refer; but the following bear upon the questions which arise for decision: "And in order that no difference may arise who shall command, it is my will and desire that Joseph, known by the name of Cudjoe, do command for life, with the assistance of Scotland, who commands after him, and upon any emergencies to take the advice of Charles, Billy, Guy, Prince, Devonshire and Cuffie, who are to have the command in succession on the like

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plan with Joseph, and after their decease, Dick, Will, George, Daniel, and so on in seniority of those born in the community; but that no tax or cess be laid but by the consent of fathers of families and house-keepers, and that he or they so commanding shall not arrogate a power to impose on any person in the community, it being his or their business to see the laws and regulations duly executed, and to use means for the welfare and protection of the community." The testator evidently intended to devise to his slaves this "Work," whatever may have been its character at that time, to be enjoyed by them as a community under the regulations which he laid down by his will. This of course created a very peculiar state of things, but the bequest could perfectly take effect as a bequest to the persons who were his slaves, and then formed the community; and it seems to have been considered, when the estate was sold to Mr. Bristowe in 1870, that the bequest had been to them as joint-tenants.

Soon after the date of this will the settlers, and amongst them Grant, were driven from Honduras by the Spaniards, and consequently the possession of any "works" they may have had was for the time lost, and the privileges which they had hitherto enjoyed were for the time put an end to. The settlers, however, appear to have returned to Honduras in 1783, about the time of the Treaty of Versailles, which has been already referred to. What took place immediately after their return must remain in some obscurity, the time being beyond the memory of any living persons. It appears, however, that Grant made a second will whilst he was absent on the Mosquito coast, and a question arose whether that will, or the prior will of 1779, should be treated as his true will and testament. The matter was determined in 1794 by the magistrates of the settlement in favour of the first will, that of 1779, and their decision is recorded in one of the documents which have been given in evidence in this case. It appears to have been decided on the petition of Cudjoe, the man named in the will as the first ruler, and of Scotland, who was to command after him. The minute or

record states as follows: "Read the petition of Cudjoe and Scotland, two negro men, on behalf of themselves, their families and all the negro and other families of colour of the late James Grant, deceased; the renunciation of James Bartlet, Esq.,"—one of the executors; "the answer given to the said petition by the magistrates, at November Quarterly Court, 1793; the will and testament of the said James Grant, made the 30th of January, 1779, proved by Thomas Potts, Esq., in which probate, it having been observed that the word 'seen' was omitted, it was interlined, and Mr. Potts again sworn to the same; likewise the will and testament of the said James Grant, made the 9th of September, 1783, and the affidavit of James Blinshall, when the affidavits of Thomas Potts, James Bartlet, Esqs., Gerald Fitzgibbon and William Mucklehany were severally taken: it was then resolved unanimously, That, from the before-mentioned affidavits, and the will made the 30th January, 1779, being sufficiently proved, the said will be considered as the real last and true will and testament of James Grant, deceased, and that every part thereof, so far as the situation of this settlement will admit of, be put in force; for which purpose the magistrates appoint Richard Hoare and Thomas Potts, Esq., as trustees for the same estate (James Bartlet, Esq., one of the executors named in the said will, having in public Court renounced his right as executor aforesaid, and disclaimed all right to act therein either as an executor or as a trustee, and the other executor named in the said will being dead). The said trustees to have full power and authority to examine into the situation of the said estate, to call all and every person concerned to an account for their intromissions with the estate, and to inspect into the situation of the negroes, and in every respect to act in such manner as may appear best for the general good of the said estate." What was "the estate" referred to? It seems to their Lordships that it could have been no other than the only immovable property the testator had, or could at that time have had, in Honduras, namely, "Grant's

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Work." That was the property upon which the slaves had been employed, and which, as devisees, they, according to the evidence, subsequently in fact occupied.

As far back as living memory can be carried, there is evidence that some of those forming the group of devisees occupied "Grant's Work," and there is no evidence whatever that any other person enjoyed or occupied or in any way interfered with the land. At the time when the decision was given in 1794 the only right which the manumitted slaves, the devisees, could have exercised with any show of title was the right to cut wood and to take the natural products of the soil; but after the final retreat of the Spaniards in 1798 the strong presumption is, that the devisees who were then actually upon the land would proceed to occupy and cultivate it, and to treat it, for all purposes, as their own. After the retirement of the Spaniards there would be no one to interfere with them, for the British Crown had not at that time assumed territorial sovereignty. The strong probability, therefore, is, that those who were placed in the advantageous position of holding, as "a location," a definite piece of land, would not confine themselves to the limited privilege allowed by the Spaniards, and would enter upon full possession and enjoyment of the land. The evidence appears to be in accordance with the obvious probability. It goes back nearly to the time when the will was established in 1794, and to the time when the Spaniards left in 1798. The Chief Justice, who tried the cause, by the consent of the parties, was to act as a jury and decide the questions of fact as well as of law which arose in the case. His note is that the evidence of the old witnesses was so clear and trustworthy that the parties left the questions of fact to him. The inferences which the learned Judge drew from the evidence will be referred to afterwards; but it will be well to advert, though shortly, to some of the witnesses. A witness whose testimony is entitled to great weight, Clashmore Lawless, an old mahogany cutter, who said that he was upwards of ninety years old, states: "I remember old Cudjoe"—the first ruler mentioned in

the will; "he is dead long ago. He was the first ruler on 'Grant's Work' and lived at the Bluff." It has been objected at the bar that there is not sufficient evidence that this "Bluff" was part of "Grant's Work"; but their Lordships cannot give effect to this objection. The limits of the "Work" are described in the information. The trial was conducted upon the assumption that it was a definite piece of land which both parties understood, and upon the boundaries of which there was no dispute. There is not a word in the evidence to show that there was any dispute as to boundaries, and it cannot be supposed that the learned Judge would have taken down evidence with regard to the "Bluff," if it had not been within what was understood to be "Grant's Work." The witness says, "I saw the wood piled up there. I knew Scotland Grant too, and Samuel Grant, and I knew Mary Grant also. They are all dead. I know Grant's Creek and Nancy Peny Creek." Then he says he was fifteen years old when the battle of St. George's Caye (1798) was fought, "which I remember. I know that old James Grant was the 'master,' but I did not know him personally." This witness was of an age which would enable him to know what he states, that the first ruler of "Grant's Work" lived at the Bluff. Thus a possession under the will of James Grant is proved at a very early date, and soon after the decision establishing it. Then a number of old witnesses are called, most of them on the part of the Crown, whose evidence is to the effect that the devisees and their descendants and families exercised various acts of ownership upon the land, not confined to the cutting of wood: there was a large quarry, the stones of which were quarried by them or by persons who had their authority to take them, and they received money for the permission granted. There seems to be no doubt that these persons were occupying and enjoying this land and treating themselves as the owners of it, and certainly without anyone interfering with them. Their occupation appears to have continued down to 1870, when the conveyance was made to the defendant

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Bristowe. The grantors in this conveyance were Mary Collins, whose maiden name was Grant, a woman nearly a hundred years old, who is stated to be the last survivor of the original devisees under Grant's will, and some descendants of the other devisees.

Then there is the important evidence of the Crown surveyor, Mr. Faber, who in 1862 went over a great part of the colony and made a map. He says, "I am the late Crown surveyor. I produce this copy of a map. It is a traced copy of my own original map made in 1862 delineating all the private property in the colony. The property of private individuals is uncoloured. The property of the Crown is green. The property of Messrs. Toledo & Co. is blue; and the property of the Belize Estate and Produce Company is red." Then there is this note of the Judge: "The map is put in and marked C (the witness, being called upon, points out 'Grant's Work' on his map, which 'Grant's Work' is uncoloured, as being the property of a private individual and not the property of the Crown)." That is a significant fact. It is not at all conclusive against the title of the Crown, but it distinctly shows that at that time the land was occupied by persons who claimed to hold it as private property. The explanation given by the surveyor upon his further examination was, "I made enquiries and found that it all hinged upon old Grant's will." It is plain from that evidence that the claim made by the persons who were then occupying was a claim to hold under Grant's will: "I knew the upper boundary, but not the extent. I left it uncoloured because it was not decided." The Crown apparently had not decided at that time to treat "Grant's Work" as Crown land, and so he left it uncoloured in the same way as he left all land occupied by private persons. Therefore the evidence of the surveyor, though not affecting the Crown as regards the title, which is not within his province, is distinct, as has been already observed, to show that the occupation was then held by persons claiming to hold as private owners. These persons claimed title under Grant's will, on which, as he

says, he understood the whole question turned.

It is to be observed that there is no opposing evidence. There is not the slightest trace of any persons other than those claiming under Grant's will exercising any act of ownership over this property, or of the Crown making any claim to it.

Their Lordships, even if they had not come to the same conclusion, would have been extremely reluctant to differ from the view which the learned Judge, deciding as a jury, has taken of the evidence. His second finding is, "That after the death of the said James Grant, his devisees, under the captaincy of one of their number named Cudjoe, entered into possession as joint tenants of the property so bequeathed to them by the testator." His further finding—the fifth—is, "That by the relinquishment on the part of Spain of all exercise or assertion of dominion within the settlement of Honduras, the qualified rights of the settlers, as they existed under the treaties above mentioned, were, by virtue of continued occupancy and long industrial possession, converted into and became merged in the higher and more ample title of estates in fee-simple; and as such they were regarded and dealt with by the inhabitants in public meeting assembled." It may be that it is not technically accurate to say that the qualified rights were merged in the higher and more ample title of estates in fee-simple; but the expression clearly indicates the view of the Chief Justice that the devisees had acquired the absolute ownership of the land, and gives force to his finding as to the possession, and long-continued occupancy, of these persons.

Assuming, then, the conclusion of fact to be established, as their Lordships think it is, that, in the interval which elapsed between the retirement of the Spaniards in 1798 and the assumption of territorial sovereignty by the British Crown, full possession of the land had been taken by the devisees, and that such possession had been continued by them and their assignees down to the date of the filing of the information, it becomes unnecessary to determine the question whether

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the devisees, at the time the British Crown annexed the territory, had acquired a title to the land by first occupancy or otherwise, which the Crown was bound to recognise. Their Lordships are by no means prepared to say that such a title has not been shown, but they think it unnecessary so to decide, because the facts as proved and found establish adverse possession against the Crown for a period exceeding sixty years—namely, a possession commencing before 1817, in or before which period the Crown had certainly assumed territorial sovereignty in Honduras—and continued without disturbance or effectual claim by the Crown down to the period of the filing of the information.

The ground on which their Lordships' decision has been placed renders it immaterial to consider the effect of the ordinances of the 14 Vict. c. 22 and 22 Vict. c. 19, and the Crown Lands Ordinance of 1872; though they are by no means satisfied that a location, such as is meant by the 35th section of the Ordinance of 1872, might not be presumed, which would entitle the respondents to the benefit of that remedial law.

On the whole case their Lordships are of opinion that this appeal fails, and they must humbly advise Her Majesty to affirm the judgment of the Supreme Court of Honduras and to dismiss the appeal with costs.

Solicitors—Bircham & Co., for appellant; Parker & Co., for respondents.

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Nov. 25. { ELPHINSTONE AND ANOTHER
(*respondents*).

Ceylon—Ordinance No. 22, 1871—Adverse Possession—Proof of Overt Acts.

By an Ordinance of Ceylon (No. 22, 1871) it is provided that proof of the undisturbed and uninterrupted possession by a defendant in any action of lands by a title adverse to the plaintiff in such action,

for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour:—Held, that such possession must be an actual physical possession proved by overt acts done on the lands in dispute.

This was an appeal from a judgment of the Supreme Court of the Island of Ceylon.

The appellant on the 10th of January, 1876, commenced an action in the district Court of Kandy against the respondents for a trespass on land known as Hunugalla and Wattagoda.

The respondents by their answer admitted that the plaintiff was entitled to the estates known as Hunugalla and Wattagoda, but denied that the piece of land in dispute formed part of the said estates, and alleged that the piece of land in dispute formed part of an estate to which they were entitled, known as Holyrood; and further alleged that they and their predecessors in title had been in possession of the piece of land in question for ten years and upwards, and on this ground claimed the benefit of a title by prescription under the Ordinance No. 22, of 1871, clause 33.

The appellant filed a replication whereby he admitted that the respondents were in possession of the estate known as Holyrood, but denied that the piece of land in dispute was part of the said estate, and further pleaded that he and his predecessors in title had been in possession of the said piece of land for ten years and upwards.

“By the Ordinance No. 22, of 1871, clause 33: Proof of the undisturbed possession by a defendant in any action, or by those under whom he claims, of lands or immovable property by a title adverse to, or independent of, that of the claimant or plaintiff in such action—that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any act by the possessor from which an acknowledgment of a right existing in another person would fairly and naturally be inferred—for ten years previous to the bringing of such action—shall entitle the defendant to a decree in his favour with costs. And in

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like manner when any plaintiff shall bring his action, or any third party shall intervene in any action for the purpose of being quieted in his possession of lands or other immovable property, or to prevent encroachment or usurpation thereof, or to establish his claim in any other manner to such land or other property, proof of such undisturbed and uninterrupted possession as hereinbefore explained by such plaintiff or intervenient, or by those under whom he claims, shall entitle such plaintiff or intervenient to a decree in his favour with costs: Provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute."

The case was heard before the district Judge of Kandy in June, 1876.

The facts are stated in the judgment of their Lordships.

The learned Judge gave judgment that the piece of land in dispute was included in the grant to the appellant's predecessors in title and not in the grant to the respondents' predecessors in title; and as to the plea of prescription, the learned Judge said, "The land remained in forest of which no use was made; no acts of possession were ever exercised. I am unable to sustain the plea of prescription."

The respondents appealed from this decree to the Supreme Court.

The appeal was heard, and on the 7th of June, 1877, judgment was given by the Supreme Court affirming the decree of the district Court on the first point, but on the plea of prescription judgment was given for the respondents.

From this judgment the appeal was brought.

Mr. F. M. White and *Mr. Jeune*, for the appellant.—The respondents have not exercised any user or act of possession in or on the piece of land sufficient in fact or in law to give them a title by prescription; nor was there any possession by the respondents by a title adverse to the appellant within the meaning of the Ceylon Ordinance.

Mr. Arthur Charles and *Mr. F. Templer*, for the respondents.—The respondents have acquired a prescriptive title to the land in question by virtue of the Ordinance No. 22, of 1871. The boundaries of the respective estates were defined by a competent authority. Acts of ownership on part of the land are sufficient evidence of possession of the whole. They referred to *Jones v. Williams* (1).

SIR MONTAGUE SMITH delivered the judgment of their Lordships (2):—

The appellant, who was the plaintiff in the action, and the respondents, the defendants, are the owners of conterminous estates, and the dispute between them relates to a piece of land, containing about fifty-four acres, lying between their two estates. The plaintiff's estate may be called Wattagoda and the defendants' Holyrood, the names which were used in the proceedings below. Both owners derived title under grants from the Crown made in the year 1842. Wattagoda was granted to two persons, Wilson and Ritchie, who in 1844 conveyed to Johnstone, and in 1873 Johnstone conveyed to the plaintiff. The grant of Holyrood was made by the Crown, on the same day, to Mackenzie, who in 1869 conveyed to Thomson; and Thomson, by two conveyances, in 1870 and 1873, conveyed to the defendants.

The action was in trespass. The defendants, besides denying that the piece of land in dispute formed part of the plaintiff's estate, and asserting that it formed part of their own, set up the defence that they were entitled to hold the land under the provisions of the Ceylon Ordinance 22, of 1871, by reason of an undisturbed possession of ten years.

The first of these questions, that of the title to the piece of land in dispute, arose in consequence of a latent ambiguity in the description of the boundaries of the estates contained in the grants from the Crown. One of the boundaries was a stream called the Welle Ella; and upon applying that description to the ground, and to the streams, as they actually

(1) 2 Mee. & W. 326; 6 Law J. Rep. Exch. 107.

(2) Sir James Colville; Sir Barnes Peacock; Sir Montague Smith; and Sir Robert Collier.

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existed, a question arose, which of two streams was the Welle Ella mentioned in the grants, the piece of land in dispute lying between those two streams. The boundary mentioned in the grant of Wattagoda is in these terms: "On the east"—that is, bounded on the east—"by land applied for by Mr. Ritchie, and Welle Ella." In the grant of Holyrood the western boundary is thus given: "On the west by the same"—that is, the property of Messrs. Gibb, Clarke & Co.—"and Welle Ella." Plans are attached to both grants, and referred to as giving the true delineation of the estates granted. The lands embraced in both grants were forest and jungle lands. At the time the dispute arose both the plaintiff and the defendants had cleared portions of their lands and cultivated them for coffee, but neither had touched the disputed piece of ground, which remained in its original state of forest or jungle.

The action was tried before the district Judge. Evidence was given on the part of the plaintiff, by surveyors and others, to show that the stream which was marked for convenience on the map X A B was the Welle Ella stream indicated in the grants. On the other side it was contended that the stream which was marked X Y Z was the true boundary; but no surveyors were examined by the defendant on that point. The defendants also contended that the evidence showed that they had had undisturbed possession for ten years. The district Judge found in favour of the plaintiff on both issues, namely, that the true boundary was the stream marked X A B, and that the defendants had not had possession for ten years within the meaning of the Ordinance. Upon an appeal, the Supreme Court held that the district Judge was right in his findings, and affirmed his judgment in favour of the plaintiff.

The judgment of affirmance was given by the two puisne Judges of the Supreme Court, either in the absence of the Chief Justice or during the vacancy of the office; afterwards, when Chief Justice Phear was present, an application was made for a review of this judgment. A review being granted, and the case re-

heard, the Court, whilst adhering to the former judgment of the two Judges upon the question of the real boundary, was of opinion that the defendants had been for ten years in undisturbed possession of the disputed land, and were therefore entitled to the benefit of the Ordinance of 1871, and on that point reversed its former decision and the judgment of the district Judge, and dismissed the plaintiff's action.

Upon the first question, that of the true boundary, their Lordships entirely agree in the concurrent judgments which have been given. It is not their usual practice to entertain the discussion of a mere question of fact which has been decided by the concurrent judgments of two Courts below; but in the present case, as the question of fact involved the consideration of the description in the grants, their Lordships have heard the argument upon it. Having done so, they see no reason whatever to dissent from the view which the Courts below have taken, and which the evidence seems entirely to support.

The plaintiff having thus established that under the grant from the Crown in 1842 the true boundary of the estate granted to Wilson and Ritchie was the stream marked X A B, and consequently his title to the land in dispute, it lies on the defendants to prove that they had held undisturbed possession of the land for ten years before the action, so that under the Ordinance their possession could not be disturbed by the plaintiff. Upon that point the Court in review has decided in their favour, and the only question that was fairly open to argument in the case is, whether the Court is right in coming to that decision.

There are two Ordinances, one No. 8, of 1834, and the other No. 22, of 1871. It is indifferent which is taken, for they are in the same terms. [His Lordship read the Ordinance No. 22, of 1871.]

The grounds of the judgment of the learned Chief Justice, which were substantially acquiesced in by the other two Judges—though it is rather difficult to formulate them, inasmuch as the Chief Justice mixed them together, rather than relied on them separately—appear to be

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these: first, that a boundary had been agreed upon or established between the parties, and that the establishment of that boundary "must be regarded as an overt act of exclusion." The boundary which he assumes to have been established is the boundary which the defendants contend for. Then, that the boundary being established, the piece of land in dispute became a part of the entire area of the defendants' estate, so that acts done on any part of that area would be evidence of the possession of the whole of it. There is another ground indicated in the judgment of the Chief Justice, namely, that the plaintiff was estopped by his own conduct from now setting up the real boundary. The conclusion of the judgment of the Chief Justice is based upon the Ordinance, but there is no doubt an indication in his observations that he conceived that some estoppel existed in the case by which the plaintiff was bound; and that point has been formally argued at their Lordships' bar by the respondents' counsel.

It is well to see, first, how the learned Chief Justice himself puts the case, and then how far the evidence bears out the assumptions on which his judgment is based. He says, "Unfortunately, it is not made quite clear by the evidence at whose instance it was that these gentlemen went"—that is, the surveyors—"but it seems certain that their results were made known to the owners for the time being of the two estates, and accepted by them as trustworthy, and as decisive of their mutual boundary relations. The conduct of the owners towards each other in view of these surveys seems to have amounted to an assertion by the one party of right of ownership and exclusive possession up to the line so ascertained, and an acquiescence by the other party in that right. And the establishment of a proprietary boundary line as against a conterminous owner, whether it be by metes and bounds or not, must be regarded as an overt act of exclusion." Assuming that under some circumstances the establishment of a proprietary boundary line might have that effect, their Lordships think that in the present case the conclusions to which the Chief Jus-

tice has come are not supported by the evidence. They think the evidence fails to prove the establishment of a boundary line in the sense of an agreement, or of an estoppel binding on the parties. The Chief Justice relies upon a transaction which appears upon the evidence, namely, that Mr. Hood pointed out to Captain Oldfield the boundary X Y Z as the true boundary. The evidence of what took place is extremely scanty, and fails to sustain that which the learned Chief Justice builds upon it. Captain Oldfield says that he went to the land in 1862 with Mr. Hood, who pointed out the stream X Y Z as the boundary, and he says he was asked by Mr. Gibson Thomson to get the boundary defined. Now if the year is correctly stated, Mr. Gibson Thomson had at that time apparently nothing to do with the estate, for he did not become assignee until the year 1869. All that appears about Mr. Hood is the statement of the defendant that he had been for fifteen years superintendent of Wattagoda. What is the meaning of superintendent, or whether Hood was anything more than farm bailiff, does not appear. It does not appear that the deeds were looked at, nor that Hood had authority to make any admission at all on the subject. If therefore it be granted that he and Captain Oldfield went upon the ground, and that the boundary spoken of was pointed out, such an act could not bind either of their principals without evidence to shew that these persons were authorised not only to point out the boundary but to agree upon it, and, to use the words of the Chief Justice, to establish it as the boundary between the two estates. It does not appear that anything was done in consequence of this transaction. It may be that the estates were about to be sold, but there is no evidence of it. There is no evidence that the supposed agreement as to boundary was communicated to an intending purchaser, though, possibly, Mr. Gibson Thomson may have at the time intended to purchase the estate.

There is evidence that a survey was made by Mr. Noad, a government surveyor, in the year 1856, and in it the boundary of the two estates was marked

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as X Y Z. Nothing appears to have been done upon that survey; but it no doubt became known. It was not, however, acquiesced in, and a question having arisen in 1869 whether it was correct, Mr. Noad was again sent to the ground to resurvey it. It is true that he adhered to his original plan; but at the same time a Mr. Toogood, a private surveyor employed on the part of those interested in Wattagoda, also surveyed the ground; and he was of opinion that the stream X A B was the true boundary. It is very unlikely that the owners of this estate, when furnished with this opinion, would have assented to the other boundary.

Their Lordships therefore think that there is no sufficient evidence of the establishment by agreement of a defined boundary which would operate to throw the piece of land in dispute into the area of the defendants' estate, so as to make acts done on other parts of the estate evidence of the possession of this part.

It has been argued at the bar that, even if the evidence fails to shew that the boundary had been established, acts done upon other parts of the land granted to the predecessors of the defendants are evidence of acts done on this land. There is no doubt that in many cases acts done upon parts of a district of land may be evidence of the possession of the whole. If a large field is surrounded by hedges, acts done in one part of it would be evidence of the possession of the whole. So in the case which was referred to of *Jones v. Williams* (1), acts done over one part of the bed of a river were held to be evidence of the right—not of the possession merely—of the plaintiff to the whole bed. The circumstances of that case are shortly stated in the marginal note: "Where in trespass the plaintiff claimed the whole bed of a river flowing between his land and the defendant's, the defendant contending that each was entitled *ad medium filum aquæ*,—Held, that evidence of acts of ownership exercised by the plaintiff upon the bed and banks of the river on the defendant's side lower down the stream, and where it flowed between the plaintiff's land and a farm of C. adjoining the defendant's land, was

admissible for the plaintiff." There the acts tended to rebut the presumption on which the defendant relied, that as riparian proprietor he was entitled to the land to the middle of the river. There it was a question of title, whether the plaintiff had the whole bed of the river, or whether the defendant had the land *ad medium filum aquæ*. The acts given in evidence were inconsistent with the claim of the riparian proprietors, and were held to afford some evidence of the opposing claim of the plaintiff to the whole bed of the river.

But how are the acts here adverse to or inconsistent with the plaintiff's title, and how can this rule of evidence be applicable to a question of undefined and disputed boundary? If the assumption of the Chief Justice was right, that a boundary had been established, it may be that the rule referred to would apply; but that assumption failing, the acts which were done upon a distant part of the defendants' land can in no way affect the title of the plaintiff to the place in question. They are not inconsistent with his title or possession; and the argument is open in a case like the present to the fatal objection that it may be used, and with greater reason, by the plaintiff, who has the title, to shew his own possession of the disputed land. The plaintiff has done precisely the same kind of acts on his land as the defendants have on theirs, and may with at least equal force contend that acts of possession on a distant part of his land are evidence of his possession of the disputed piece. It is impossible that the question of disputed boundary can be affected one way or the other by such acts.

In this case there is no evidence whatever of actual possession of the land in question, nor of any overt or physical act of ownership done upon it. It remained, as it ever was, in its forest and jungle state. The learned Chief Justice assumed, as may be the case, that both parties believed that X Y Z was the true boundary, so that the defendants enjoyed what may be called an ideal possession of this land. But the terms of this Ordinance require that they should have had undisturbed and uninterrupted possession—meaning

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actual possession, and not one existing only in the imagination of the parties.

On these grounds their Lordships are of opinion that the defendants have entirely failed to bring the case within the Ordinance on which he relies.

The case of the defendant, so far as it rests on estoppel, seems to be equally without foundation. The Chief Justice bases his judgment on an assumption which, if correct, might support this contention; but the evidence does not establish the fact which he assumes. The most pertinent part of his judgment on this point is as follows: "The original description of boundaries was no doubt continued in the conveyances made on the sales; but, as the district Judge finds, upon the assurance of the surveys (which probably took place preparatory to the sales), the stream X Y Z was locally understood"—that is, by the persons in the neighbourhood—"to be the boundary stream, and both vendors and purchasers intentionally dealt with each other for the land up to its bank; that is, for the plot (C), with the rest of the land, in the presence, so to speak, of the owners of Wattagoda, who were, as I understand, admittedly aware of the transaction, and acquiesced in it." The understanding of the people in the neighbourhood can hardly affect the defendants. Then there appears to be no evidence that the owners of Wattagoda were either actually or constructively present at the sale of Holyrood to the defendants, or that they were informed or had notice of the sale, or in any way acquiesced in it. The utmost that appears is that they did not interfere in it. But they had no right or reason to interfere when Mr. Thomson was selling his land to Mr. Elphinstone. If it was meant to bind the plaintiff by anything like an estoppel, the parties who were then buying and selling should have gone to Mr. Johnstone, the then owner of Wattagoda, and have called his attention to the sale, giving him notice that they were dealing on the footing of this boundary, and enquiring if they were safe in so doing. If they had so done there might have been ground for the estoppel that has been set up.

The strongest evidence in favour of the

estoppel is the transaction with regard to the boundary which is supposed to have taken place between Captain Oldfield and Mr. Hood, upon which their Lordships have already commented; and as, in their judgment, that transaction does not amount to the fixing of the boundary so as to bind the respective owners of the estates, still less does it amount in itself to an estoppel in point of law, which would estop Mr. Clark from setting up his real title. It is not to be forgotten that in this case both parties have purchased upon the original descriptions in the deeds, and upon the delineations in the maps annexed to them, and that the additional acreage which Mr. Elphinstone says that he bought, and which, he conceived, included this land, is not contained in the deed of conveyance to him. He undoubtedly must have made his purchase taking his chance whether he could establish his title to the additional quantity of land or not. He clearly has not established a title to the piece of land in dispute, which their Lordships think is indisputably in the plaintiff, nor in their opinion has he established any bar by reason of the Ordinance of Limitation, nor anything which approaches to an estoppel which would prevent the plaintiff from setting up his real title.

Under these circumstances their Lordships will humbly advise Her Majesty to reverse the judgment under appeal, to affirm the first judgment of the Supreme Court, and to order that the respondents do pay to the appellant the costs of and incidental to the proceedings in the Supreme Court on review. The respondents must also pay the costs of the appeal to Her Majesty.

Solicitors—White, Borrett & Co., for appellant;
Torr, Janeways, Torr & Gribble, for respondents.

1831.
Feb. 3.

SASTRY VELAIDEE ARONEGARY and
SEMBACUTTY SINNEPULLEI (his
wife) (appellants) v. KASSA-
NADER SAMBONADE AND OTHERS
(respondents).

*Ceylon—Roman Dutch Law—Marriage
—Cohabitation—Presumption of Law.*

By the Roman Dutch law which prevails in Ceylon when a man and woman are proved to have lived together as man and wife, the law will presume that they were living together in consequence of a valid marriage and not in a state of concubinage, unless the contrary be proved.

This was an appeal from a judgment of the Supreme Court of Ceylon.

The appellants brought an action claiming by their libel part of the estate of Sembacutty Pattenier, in right of Sembacutty Sinnepullei, whom they alleged to be the widow of Sembacutty Pattenier, and also to be the representative of her deceased child.

The respondents by their answer denied that the deceased was ever married to the appellant, Sembacutty Sinnepullei, and denied that the latter's child was born in wedlock, and denied community of property.

The action came on for hearing, and the district Judge decided that the second appellant had been the wife and was now the widow of the deceased, holding that, though all the marriage ceremonies had not been performed, it is not the custom of the country to observe these strictly on the occasion of any but the first marriage, that the deceased's stingy habits did not favour their being performed, and that the opposition of the woman's brothers and brother-in-law to the marriage gave the deceased an excuse for avoiding all further ceremonies.

The respondents appealed from this judgment to the Supreme Court of Ceylon, which, on the 12th of February, 1878, reversed the judgment of the district Court, and dismissed the appellants' action.

From this judgment the present appeal was brought.

Mr. Gorst and Mr. Stock, for the appel-

lants.—The evidence shews that the native ceremonies essential to constitute marriage were duly observed. There was no evidence of any intention to establish any other relation between the parties than that of husband and wife. Competent judges of native ceremonies considered them married, and they were universally so reputed until the error arose as to the necessity of registration. The Supreme Court, considering the case, entertained a presumption contrary to marriage, and threw the burden of proof on the appellants, whereas the burden properly lay on the respondents to prove that the necessary rites had not been performed. They referred to *Piers v. Piers* (1) and *De Thoren v. The Attorney-General* (2).

Mr. W. Phillimore and Mr. Durham, for the respondents.—The appellant was not the wife of Sembacutty. If there was cohabitation, such cohabitation was that of concubinage and not of marriage. The form of marriage used was wanting in all the necessary ceremonies of a marriage. A marriage could only be made out according to the Tamil customs, and such customs were not complied with. The burden of proof, after so long a delay, was upon the appellants. They referred to *Van Leeuwen* (ed. 1820), p. 71; *Grotius, Introduction to the Dutch Law*, pp. 24, 516; *Voet*, b. 22, 2; *Thompson's Laws of Ceylon*, vol. ii. p. 564.

SIR BARNES PEACOCK delivered the judgment of their Lordships (3).

This appeal arises out of a suit brought by the plaintiffs, who are husband and wife, in which it was alleged that the second plaintiff was, at the time of her marriage with the co-plaintiff, the widow of one Pattenier. The suit was brought against the defendants to recover a share of the property of Pattenier to which it was alleged that the second plaintiff, as his widow, was entitled; the plaintiffs also claimed a share which it was alleged had descended to her from a deceased child

(1) 2 H.L. Cas. 331.

(2) 1 App. Cas. 686.

(3) Sir Barnes Peacock; Sir Montague E. Smith; Sir Robert P. Collier; Sir Richard Couch.

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of Pattenier by her. The question is whether she was lawfully married to Pattenier, and the child legitimate.

The first defendant is a brother of Pattenier, and was an executor under his will; the second defendant was a son of Peramakuddi Kassinator, an uncle of the second plaintiff; and the third defendant was the wife of the second defendant, and a daughter of Pattenier by a deceased wife. The learned Judge of the first Court found that there was a valid marriage. He says in his judgment, "First, it is indisputable that the second plaintiff lived in the house"—that is, the house of Pattenier—"subsequent to the death of testator's—that is, Pattenier's—second wife, the mother of third defendant and her minor sister and brother. Secondly, it is also indisputable that the second plaintiff gave birth to a child in the testator's house, which child survived the testator, though by a few months only. Thirdly, the evidence in favour of the plaintiff's being the wife vastly preponderates over that supporting the contrary view, not only in quantity but in quality. If this be accepted, the legitimacy of the child from whom second plaintiff claims one thirty-second share is also indisputable. In a case of this kind, if there were really any room for doubt, the evidence on either side should be pretty evenly balanced; and yet quite the contrary is the case, the defendants' being by far the weaker."

Upon appeal to the Supreme Court of Ceylon that judgment was reversed by the learned Chief Justice. It appears to their Lordships that the Chief Justice threw the *onus* of proof on the wrong parties, inasmuch as he held, in substance, that it was necessary for those who claimed by virtue of the marriage to prove what were the customs of the Tamils with regard to marriage, and that this marriage was legally performed.

Their Lordships have no doubt, upon the evidence, that Pattenier and the second plaintiff lived together as man and wife. It was proved that she visited with him, and that she presented betel to their friends, which their Lordships apprehend a concubine would not do. They not only lived together as man and wife,

but there is strong evidence to show that there was a legal marriage.

Pattenier and the second plaintiff were Tamils, and the first defendant, who was called as a witness, proved what the custom was. He said, "She was married according to the custom of the country, but she is not the lawfully registered wife." It is true that the marriage was not registered; but it was not necessary to have it registered; inasmuch as the Act which rendered the registration of marriages compulsory was not passed till after the marriage was celebrated. The witness proceeded: "The ceremony we usually perform is for four or five or six persons to be invited, according to the wishes of both parties, and rice ceremony to be performed at the house of the bride or bridegroom. If the rice ceremony is performed it is a marriage." The second plaintiff herself was examined. She said that she was twenty-two or twenty-three years of age: "I lost my parents when I was five or six years old. After their death I was in charge of my sister Valiamma and her husband. I was there up till a year after I reached puberty. I do not know the year. I then went to my uncle Kassinator's house, my aunt, his sister, coming and calling me. I remained there eight, nine or ten days. After that my uncle, his wife, his son (the second defendant)"—which is important—"his son-in-law and daughter, my brother and aunt, took me to Pattenier's house to marry me there." It appears, according to her evidence and to other evidence in the cause, that she was taken to the house for the purpose of being married. It also appears that her brother-in-law was anxious that she should be married to a brother of his, and not to Pattenier. She says, "We went on to the house. Rice was ready to be served. They spoke of serving it to the persons who accompanied me. Then there was a row. The row was commenced by my brother-in-law and brother, who stood at the gate." There were two brothers, one who stood at the gate and assisted in making the row, and another who afterwards executed a deed of dowry which will be presently alluded to. "I was at the time inside

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the house. When I heard the row I asked what it was, and they told me that my brother and brother-in-law were at the gate making the row. Then my uncle and his son got out." In her cross-examination by the second defendant's advocate she said, "During the row, and before it ceased, rice was served to us, and the people went away. The rice was served before the row commenced. Pattenier gave me a kuree cloth. The tali was tied next morning; not tali, but he gave his jewels to my uncle's wife to put them on me, and she did so. There are now present as witnesses who were then present Kannavate, Pavamattee, Katuramen, and my uncle's wife. I do not know whether Sivahami is present here as a witness or not. On account of this row other ceremonies could not have been performed. Other ceremonies were necessary for marriage, but were not performed on account of the row. My relatives left at the commencement of the row."

Strong reliance was placed by the defendants upon the statement "that other ceremonies were necessary for marriage, but were not performed on account of the row." It is to be observed that that statement was obtained upon cross-examination, and was probably in answer to a leading question. The witness was, in all probability, better acquainted with what ceremonies were usually performed than what were actually essential to the legality of a marriage.

Their Lordships do not attach much importance to the answer. There is evidence from which it may be inferred that the serving of rice was the essential ceremony; and it was proved that rice was served. But the evidence of the marriage does not rest here. It is confirmed in the strongest manner by certain dowry deeds. On the 21st of October, 1866 (the marriage having taken place on the 20th), Peramakuddi Kassinator, who was the uncle of the second plaintiff, and the father of the second defendant, and was also a notary, and therefore more likely than a young woman, the second plaintiff, to know what ceremonies were essential to the validity of a marriage, executed a deed by which he conveyed to Pattenier

and the second plaintiff a garden by way of dowry. It says, "On the 21st day of October, in the year 1866, I, Peramakuddi Kassinator, notary of Kattankuddiyiripu in Batticoloa, do hereby acknowledge to have granted a garden in dower to Sampakoddi Sinnepullei, my niece"—that is, the second plaintiff—"and Sinnepullei's husband, Sambekodijar Pattenier, of the same place, to the following effect." Then, after describing the boundaries of the garden, it says, "And the said garden with all the produce thereof are to be possessed and enjoyed by the aforesaid Sinnepullei and her husband, Pattenier, according to their pleasure, for ever." That deed was attested by four witnesses, and is stated to have been duly read over and explained to the parties, including Pattenier, and to the witnesses; and it is also proved by one of the witnesses that the deed was executed in triplicate, and that one of the parts was handed over to Pattenier, who retained it. It appears also from the evidence that Pattenier and the second plaintiff took possession of the garden; that they used it; and that the second plaintiff, after the death of Pattenier, executed a lease of the cocoa-nut trees growing in it to a tenant who was called as a witness, and who proved that under the lease he had possession of and gathered the cocoa-nuts. There seems to be, therefore, no doubt that Pattenier and the second plaintiff acted upon the deed, in which Pattenier was described as the husband of the second plaintiff. On the same day the brother of the second plaintiff acknowledged to have granted, in dower to his sister, money, jewellery and other property, and that she and her husband were to possess and enjoy the same. That deed was also read over and explained by a notary public. It was attested by four witnesses, and it was handed over like the other deed to Pattenier and the second plaintiff; and it appears that the wife took possession of the property. In addition, the deeds appear to have been registered in the office of the Registrar of Lands, so that it was made public that the property had been given to Pattenier and the second plaintiff as husband and wife upon their marriage. The second

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and third defendants claim the property through the husband, who, by retaining the deeds and taking the property under them, must be taken to have acknowledged that there was a lawful marriage.

A document was put in evidence marked E, which was signed by the second defendant, as registrar, and which was the register of the death of the child of Pattenier and the second plaintiff, in which it was named Pattenier, which would not have been the case if it had merely been the son of a concubine. It was proved that the second defendant was one of the persons who went with the uncle and the second plaintiff to the house of Pattenier in order that she might be married, and he appears to have been present when the ceremony was performed. He therefore was capable of judging whether the marriage was a valid one or not, and whether the child was legitimate or illegitimate; and as a registrar of deaths he registered it as the child of Pattenier. Then again, when the plaintiffs were married in 1873, he signed the register of his marriage, in which the first plaintiff was described as a widower and the second plaintiff as a widow, which she would not have been if she had been merely a concubine of Pattenier. Therefore there is evidence, under the hand of the second defendant, in which it is in effect admitted that there was a marriage; that the lady when she married the present plaintiff was the widow of Pattenier; and that the child which she bore was a legitimate child.

Again, there was a petition put in by the second plaintiff on the 21st of March, 1870. The second defendant at that time had not married the daughter of Pattenier, and was not interested, therefore, in setting up that the marriage was not a lawful one. The petition contained the following passage: "The petitioner begs to inform the Court that she is the third wife of the late Sembacutty Kannaku Pattenier of Surepatte, a principal rich man in this place. The petitioner further says that the said Sembacutty Pattenier (her husband) also gifted her clothes, and she used and enjoyed and lived with him, till his death, as husband and wife. The said petitioner further says that the said Pattenier married her and lived

with her amicably, and also received dowry from her in writing, and she brought forth two children, who are dead. The petitioner further says that after the death of her husband, his brother, Sambacutte Vaigaille, has taken all the jewels and ornaments, the clothes, and he delays to return them;" and therefore she prays that she may be relieved. That document appears, according to the evidence, to have been prepared at the instance of the second defendant and with his knowledge. Therefore there is not only the fact that Pattenier and the second plaintiff lived together as reputed husband and wife, that she visited his friends as his wife, and that he held her out to the world as his wife, but that the second defendant has in documents under his hand acknowledged, at a time when he was not interested in disputing the marriage, that she was lawfully married. Notwithstanding all that evidence, and after the finding of the first Court, the Chief Justice in his judgment says, "A great deal of evidence was gone into on both sides, and the *onus* was on the plaintiffs to prove—first, what are the ceremonies necessary to constitute a valid marriage in the Tamil caste, to which the parties belong; secondly, that these ceremonies were duly performed at the marriage in question. On the first point the evidence is so conflicting that it is impossible to gather an intelligible account of what are the ceremonies necessary to constitute a valid marriage amongst the Tamil natives of the Batticoloa district." He did not say that it had been proved to his satisfaction that the marriage was not according to the custom, but merely that the evidence was so conflicting that it was impossible to gather an intelligible account of what were the necessary ceremonies, and he threw the *onus* of proving what were the necessary ceremonies on the plaintiffs, and found that they had failed in making out that all the necessary ceremonies had been performed. He proceeded: "So far as the evidence can be followed, the ceremonies seem to vary according to circumstances, such as the position and wealth of the bride and bridegroom, and whether a man or woman is married for the first time. The witnesses also differ as to what

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are essential ceremonies; and on a review of the whole of the evidence it appears clear that either there is not a well-recognised ceremonial to be observed on occasions of marriage, or that the witnesses were wholly ignorant of what they were called to prove. It is admitted that all the necessary ceremonies were not performed at the marriage in question, but it is alleged that they could not have been on account of the disturbance which took place when the marriage was going on. We think this excuse, even if true, is insufficient in law, as a marriage cannot be taken to have been duly celebrated if any of the essential ceremonies were not duly observed, even though such omission was unavoidable."

It was contended by Dr. Phillimore that the presumption of marriage arising from cohabitation with habit and repute did not apply to the case of the Tamils and to Ceylon; but it appears from the authorities which he cited that, according to the Roman Dutch law, there was a presumption in favour of marriage rather than of concubinage. It does not, therefore, appear to their Lordships that the law of Ceylon is different from that which prevails in this country—namely, that where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage. Dr. Phillimore did contend that in a district where concubinage was not considered as immoral the same presumption would not arise; but their Lordships cannot agree with him in that respect. It is evident that in the district in which Pattenier lived wives are treated differently from concubines, and it is not because a number of persons live in a state of concubinage to be presumed that a man and woman who are living together as reputed husband and wife are not lawfully married. It is evident from the parties going through the form of marriage that they intended to be married; and if they were not married according to the strict custom, it was not in consequence of their wish that it should be so. It appears clearly

that they did consider that a valid marriage had taken place.

In the case of *Piers v. Piers* (1) it was laid down by the House of Lords that the presumption of marriage arising from cohabitation with habit and repute can only be rebutted by the clearest and most satisfactory evidence. The Lord Chancellor said, "I have not found that the rule of law is anywhere laid down more to my satisfaction than it is by Lord Lyndhurst in the case of *Morris v. Davies* (4), as determined in this House. It is not precisely the same presumption as exists in the present case; but the principle is strictly applicable to the presumption which we are considering. He says, 'The presumption of law is not likely to be repelled. It is not to be broken in upon or shaken by a mere balance of probability. The evidence for the purpose of repelling it must be strong, distinct, satisfactory and conclusive.' No doubt every case must vary as to how far the evidence may be considered as satisfactory and conclusive; but he lays down this rule, that the presumption must prevail unless it is most satisfactorily repelled by the evidence in the cause appearing conclusive to those who have to decide upon that question."

In *De Thoren v. The Attorney-General* (2), Lord Cairns, then Lord Chancellor, stated that the presumption of marriage is much stronger than the presumption raised with regard to other facts; and he referred to *The Breadalbane Case* (5), in which it was held that the presumption was one which not only might, but ought, to be drawn from cohabitation with habit and repute, although the cohabitation commenced with a ceremony which was not only invalid by reason of the real husband of the woman being alive at the time, but was known by both parties to be invalid.

Their Lordships having come to the conclusion that Pattenier and the second plaintiff lived together as man and wife, and that Pattenier held her out as his wife, the presumption of their marriage is not lightly to be rebutted. The Chief Justice did not find that the presumption

(4) Cl. & F. 163.

(5) Law Rep. 2 H.L. (Sc.) 182.

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was rebutted, but he threw the *onus* of proving a legal marriage, according to the custom of the Tamils, upon the other side. Their Lordships think that the learned Chief Justice was in error in overruling the decision of the Judge of the first Court, who had come to the conclusion upon the evidence that there was a legal and a valid marriage.

Their Lordships, therefore, will humbly advise Her Majesty that the decree of the Supreme Court be reversed, and that the decree of the first Court be affirmed. The respondents must pay the costs of this appeal.

Solicitors—A. Cayley, for appellants; F. H. G. Payne, for respondents.

1881. { JOHN P. LAWLESS (*appellant*)
March 22. { v. JAMES SULLIVAN AND
OTHERS (*respondents*).

Canada—New Brunswick—Assessment Act (31 Vict. c. 36), s. 4—Construction—Income—Balance of Gain.

The St. John's New Brunswick Assessment Act, by section 4, provides that the agent of any joint-stock company established out of the province who shall carry on business within the city of St. John's for any such company shall be assessed upon the amount of "income" derived by him for the same as such agent:—Held, that "income" means the balance of gain over loss in any financial year.

This was an appeal from a judgment of the Supreme Court of Canada, affirming a judgment of the Supreme Court of the province of New Brunswick, on a Special Case submitted to the Supreme Court of the province of New Brunswick.

The facts were as follows:—

The Bank of British North America, a corporation established out of the limits of the province of New Brunswick during the period from the 1st of January, 1875, to the 31st of December, 1875, carried on business in the city of St. John's, in the province of New Brunswick, by its manager.

The fiscal year of the bank preceding the making up of the annual assessment for the city of St. John's for the year 1876, commenced on the 1st of January and ended on the 31st December, 1875. During this fiscal year the bank sustained losses arising out of its business within the city, exceeding all the profit made by or for the bank in the city during the said fiscal year; and on the whole year's business of the fiscal year of the bank, in consequence of the losses, the bank made no gain or profit, and none was made or received by or for the bank within the city during the said fiscal year. But for the losses made by the bank as aforesaid the income derived from their business within the city during the said fiscal year would have amounted to the sum of 46,000 dollars, but the losses made by the bank as aforesaid exceeded that amount and left it a loser by the business of the year within the city.

The respondents, who were the assessors of taxes for the city of St. John's for the year 1876, in making the assessment for that year, assessed the appellant as such manager of the bank in the sum of 1,725 dollars, for taxes claimed by them to be payable by the bank on the sum of 46,000 dollars, which the respondents claimed to be the income received by the manager of the bank during the year.

The St. John's New Brunswick Assessment Act, 1868 (31 Vict. c. 36), by section 4, provides that "the agent or manager of any joint-stock company or corporation established abroad or out of the limits of this province, or of any person or persons, whether incorporated or not, doing business abroad or out of the limits of this province, who shall carry on business within the city of St. John for, or who shall have an office or place of business in the city of St. John for, any such company, corporation, person or persons, shall be rated and assessed in like manner as any inhabitant, upon the amount of income received by him for the same as such agent; and, for the purpose of enabling the assessors to rate such company or corporation, person or persons, the said agent or manager shall, when required in writing by the assessors so to do, furnish to them a true and correct

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statement in writing, under oath, setting forth the whole amount of income received for such company or corporation, person or persons, within the city of St. John, during the fiscal year preceding the making up of the annual assessment."

The Supreme Court of the province of New Brunswick pronounced judgment that the appellant, as manager of the bank, was liable to be assessed in the sum of 1,725 dollars for taxes claimed by the assessors to be payable by the bank on 46,000 dollars income, during the fiscal year of the bank preceding the making up of the annual assessment for the city of St. John's for the year 1876, under the Acts of assembly relating to the assessing of rates and taxes in the city of St. John's, and that the assessment made by the assessors as stated in the Special Case was to stand.

An order was made allowing the appellant to appeal to the Supreme Court of Canada from the above judgment.

The appeal was heard in the Supreme Court of Canada on the 15th of April, 1879, and judgment was given dismissing the appeal.

From this judgment the present appeal was brought.

Mr. Benjamin and *Mr. Jeune*, for the appellant.—The income of a company established out of the province upon which the rate is to be levied, means the balance of profit made by the company on the transactions of the year, and not the total of the sums earned, without regard to the sums lost. On the true construction of the Act the manager did not receive any income for the bank in the financial year.

They referred to *The Queen v. The Commissioners of the Port of Southampton* (1), *Forder v. Handiside* (2), and to *Burroughs on Tazation* (3rd ed.) p. 159.

Mr. J. Brown and *Mr. R. Brown*, for the respondents.—The word "income," as used in the 4th section of the statute 31 Vict. c. 36 means the "earnings" of a company without reference to outgoings,

and not the "net profits" thereof during each fiscal year. The words of the Act, "the whole amount of income received," used in the 4th section mean the whole "incomings" of a company arising from its discounts, interest, premium on exchange, &c. These are earned when received, and form the "income" of the company as distinguished from "net profits" or "net income."

They referred to *Gilbertson v. Fergusson* (3).

SIR MONTAGUE E. SMITH delivered the judgment of their Lordships (4).—The question to be determined on this appeal is whether the appellant, as the manager of the Bank of British North America, in the city of St. John's, in the province of New Brunswick, was in 1876 rightly assessed by the respondents, the then assessors of taxes for that city, in the sum of 1,725 dollars for the fiscal year, beginning on the 1st of January and ending on the 31st day of December, 1875. The question is one of general importance, since it involves the principle upon which any incorporated joint-stock bank or other company established out of the limits of the province of New Brunswick, and any person doing business out of such limit, but having a branch or agency in the city of St. John's, is liable to be assessed under the Acts relating to the levying of rates in the said city.

The question was in the first instance submitted to the Supreme Court of the province of New Brunswick upon a Special Case, of which the following are the material paragraphs:—

"The bank, during the fiscal year (1875), sustained losses from the business transacted by it within the city during the said fiscal year, and on the whole year's business of the said fiscal year the bank, in consequence of the said losses, made no gain or profit, and none was made or received by or for the bank during the said fiscal year.

"But for the losses made by the bank in the said fiscal year, arising during

(1) 39 Law J. Rep. Q.B. 531; Law Rep. 4 H.L. 472.

(2) 45 Law J. Rep. Exch. 809; Law Rep. 1 Ex. D. 233.

(3) 49 Law J. Rep. Exch. 536; Law Rep. 6 Ex. D. 57.

(4) *Sir Barnes Peacock*; *Sir Montague E. Smith*; *Sir Robert P. Collier*; and *Sir Richard Couch*.

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that year out of the business of the said bank within the said city, the income derived from such business in the said year would have amounted to forty-six thousand dollars; but the losses sustained by the said bank on its business in the said city during said fiscal year exceeded that amount, and left the bank a heavy loser on its business of said year within said city.

"The said assessors have assessed the said John P. Lawless as manager of the said bank, in the present year, in the sum of one thousand seven hundred and twenty-five dollars for taxes claimed by the said assessors to be payable by the said bank on forty-six thousand dollars income during the said fiscal year.

"The bank claim that the income on which the bank is liable to be assessed is the gain (if any) received by the said bank from the whole business of the fiscal year, and that as the losses of the business in the said city of the said fiscal year exceeded all the profits which the bank, but for said losses, would have made, the bank in fact made no gain from said business within the said city during the said fiscal year, and therefore received no income from the said business, and are not liable to be assessed as aforesaid."

The Supreme Court of New Brunswick, by a majority of three Judges to one, decided that the appellant, as the agent for the bank, was liable to be assessed for the year in question upon 46,000 dollars income, and accordingly that the assessment made by the assessors, as stated in the Special Case, was to stand.

Upon an appeal against this decision, the Supreme Court of Canada, consisting of the Chief Justice and four puisne Judges, affirmed the judgment of the Supreme Court of New Brunswick, Mr. Justice Henry dissenting.

On an application for special leave to appeal against these judgments, this board, considering the general importance of the question, deemed it right to advise Her Majesty to grant such leave.

The provincial Acts relating to the levying, assessing, and collecting of rates in the city of St. John's are the 22 Vict. c. 37, the 31 Vict. c. 36, and the 34 Vict. c. 18. It will be convenient to distinguish

these statutes by the years in which they were passed, and to speak of them as the Act of 1859, the Act of 1868, and the Act of 1871.

The section of the Act of 1859, which dealt with what it will be convenient to call "foreign companies"—that is, companies established out of the limits of the province, but carrying on business by an agent in the city of St. John's—was the 15th. It may be necessary to refer hereafter to the terms of this section with reference to some of the arguments that have been used in this case; at present, however, it is only necessary to state that it was repealed by the 4th section of the Act of 1868, which is the existing enactment that directly defines the liability to assessment of a foreign company or trader.

The enactment, so far as it is material to the present question, is in these words. [His Lordship read the section.]

It is desirable here to note a distinction between the repealed section of the Act of 1859 and the substituted section in the later Act. The former was limited to foreign joint-stock companies or corporations, whereas the latter is extended to all persons, whether incorporated or not, who, having their principal place of business out of the limits of the province, carry on business through an agent within the city of St. John's. All are brought within the same category, and the principle of assessment defined by the section applies equally to all.

What then, upon the proper construction of the enactment, is that principle of assessment? The answer to this question depends upon the meaning to be given to the words, "the amount of income," and "the whole amount of income," received by the agent within the city of St. John's during the fiscal year preceding the making of the annual assessment.

The Courts in Canada have in effect decided that "income" means all the items of profit on the transactions of a business during the fiscal year, without regard to any losses arising from the same business during that year. Their Lordships cannot think that this is a sound or reasonable construction of the enactment.

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The most specific definition or description given by the Judges of what in their view is the income of a bank, within the meaning of the Act, occurs in the following passage of the judgment of the Chief Justice of the Supreme Court :—

“The income of a bank is its discounts, interest, premium on exchange, &c., and this is earned when received, and forms the income of the bank. If the bank makes bad debts on any business or transactions of the current year, or operations entered into in past years, that is a loss *pro tanto* of capital. This they may make up by borrowing money, or by calls on the stockholders, or so much of the lost capital may be replaced from ‘income,’ but it was in either case the capital invested that was really lost, not the income. In making up a profit and loss account, the bank would necessarily be debited with all interest paid, losses made, expenses incurred, or disbursements, in fact, all ‘outgoings,’ and credited with all interest, earnings or gains, and the balance would be the net loss or the net profit of the year, but certainly would not be the ‘income’ of the year.”

Their Lordships are unable to agree with this view of what would and would not be the “income” of a bank. It must always be borne in mind that the tax is imposed on the income received during the fiscal year, and what therefore has to be ascertained for the purpose of assessment is the income for an entire year. There can be no doubt that, in the natural and ordinary meaning of language, the income of a bank or trade for any given year would be understood to be the gain (if any) resulting from the balance of the profits and losses of the business in that year. That alone is the income which a commercial business produces, and the proprietor can receive from it. The question is, whether the word “income” in the enactment to be construed is to be understood in a different, and what, for the purpose of taxation, would be a more onerous sense.

It was not and could not be contended on behalf of the assessors that “income” in the enactment meant all the takings or moneys received by a bank or in a

trade from customers or otherwise; and it was not denied that it meant profits, in some sense of that word. The contention, as their Lordships understood it, was that the items of profit should be selected from the accounts, and the aggregate of these items treated as being the income of the year.

The learned Chief Justice says, “The income of the bank is its discounts, interest, premium on exchange, &c., and this is earned when received, and forms the income of the bank.” He thus, in effect, treats every particular earning as irrevocably subject to taxation, so soon as it is received, though the period of assessment is postponed to the end of the fiscal year. But the Act does not impose a tax on each individual earning or gain, but on the income of the year, which can only be ascertained on taking an account for the whole year. The intention of the Legislature should be very clearly shewn to justify an interpretation of the word “income” which would require that, in the account for the year, the items of profit only should be included, and the losses excluded, although, but for the operations which occasioned the losses, the apparent profits could not have been made. A few instances will shew how such an interpretation would operate. Suppose a bundle of bills are discounted, maturing, as would probably be the case, at different dates, there would at once be an apparent profit on the transaction in the discounts; but suppose some of the bills should be dishonoured, and that on the whole transaction the bank ultimately sustained a heavy loss, are the discounts received on the bills which were met to be regarded as taxable income, without regard to the loss the bank sustained on those which were not met? Again, suppose a bank, in order to increase its resources for lending and discounting, takes up money, say at four per cent., and, owing to a fall in the rate of interest, can only employ it at three per cent., is the amount which the bank receives for interest and on discounts at three per cent. to be treated as taxable income, without reference to the loss it has sustained by borrowing at the higher rate? Their Lordships cannot think that, on a reason-

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able construction of the Act, these questions ought to be answered in the affirmative.

It is unnecessary to multiply instances, though it is obvious that many others of a similar kind to those already mentioned, such as commissions received on transactions which result in losses to the bank, may occur in a banking business.

The Judges appear to have assumed that the losses made by the bank in the present case arose from bad debts. This may have been so, but the Special Case does not specify the nature of these losses, which may have been of the kind above adverted to.

In the cases of merchants and traders, the difficulty of construing "income" as the Courts in Canada have done is as great, if not greater, than in regard to banks. In the case of a foreign merchant, who carries on business in St. John's by consigning goods to his agent for sale there, it may well happen that the sale of some of the goods may produce a profit, whilst a loss may occur on the rest of the goods of the same consignment, in consequence either of a fall in prices, the depreciation in the quality of the goods or the insolvency of the buyers. So, a trader who keeps a general store may gain on some of the articles in which he deals and incur losses on others. In these cases, though the losses balanced or exceeded the gains, and consequently no income was or could be received from the business of the year, it would follow from the construction contended for by the respondents that the gain on the particular sales which yielded a profit would still be subject to taxation. Such a construction implies, as already observed, that the tax would attach on each sale producing profit, which is not the ordinary or fair meaning of a tax upon the income of the fiscal year.

The Courts in Canada have referred to the general scheme and language of the Assessment Acts in support of the construction they have given to the provision in question. In the first place, it was pointed out, referring to section 12 of the Act of 1859, that, by the scheme of the Act, the inhabitants of the city

were rated upon the value, not only of their real estate in the city, but also of their personal estate; and it was suggested that, inasmuch as foreign companies and traders could not be taxed on their property, the rate was imposed on the income received by them from business carried on in St. John's, as being a rough measure of the capital employed in such business. It was argued, as a consequence of this supposed intention of the Legislature, that "income" must mean something different from and more than the gain on the balance of profit and loss, for otherwise, it was said, there would not be that equality of rating which the Legislature had in view. But, even if the supposed intention could be safely inferred, it does not, by any means, lead to the consequence sought to be deduced from it. The 12th section of the Act of 1859 provides that the real and personal estate of the inhabitants shall be put down at only "one-fifth of the actual worth thereof," and, by section 10, all just debts may be deducted; so that, upon the assumption that a profit of twenty per cent. would represent average trade profits, a rate on income in the sense of gain or profit may have been reasonably considered as roughly corresponding with a rate of one-fifth of the value of personal property; and this would probably be so, having regard to the provision that debts may be deducted from the total value of such property. In their Lordships' view, therefore, no material support to the construction placed on the word "income" by the judgment under appeal can be derived from the manner in which the personal estate of the inhabitants is to be rated.

With regard to the argument that if, in ascertaining income, the losses of the year are to be considered, it would happen, in the event of losses exceeding profits, that the foreign company or trader would receive the benefit of municipal services without contributing to the expense of maintaining them, it is to be observed that this consequence is the natural and inevitable result of every tax or rate on income, in the sense of profits, derived from trade, and would certainly happen in all cases falling under the

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General Assessment Act of the province of New Brunswick, in which "income" is defined to mean "the annual profits or gain arising to any inhabitant from any trade," &c. Precisely the same result would occur in the case of the rate imposed upon one-fifth of the value of the personal estate or capital of the inhabitants of St. John's, in the cases where the debts of the owners of such property should be equal to or exceed it. Such cases may obviously occur, since it too frequently happens that traders carry on business, often for a considerable time, after their estate is in this condition. In such cases there would of course be no assessable property.

Their Lordships have felt some difficulty in appreciating the view of the Chief Justice that the bad debts of the current year are a loss "*pro tanto* of capital," and that, in such case, "it is the capital invested that is really lost, and not the income." Surely every banker or trader properly conducting his affairs would, in the first instance, at least, charge losses to income—that is, in ascertaining the income of a year's business, would set the losses of the year against its profits. To treat profits as income and to charge losses to capital would be to enter upon a road leading very directly to financial ruin.

Another argument in support of the judgment appealed from was founded on the use of the words "net profits" in reference to the rating of foreign insurance companies.

The 15th section of the Act of 1859, which first enacted the mode of assessing foreign companies, provided that the assessment on the manager of insurance companies, established abroad, should be taken "on a three years' average of the yearly net profits on insurance of property situated within the city." By the 2nd section of the Act of 1871, in lieu of the above-mentioned provision, it was enacted that the assessment should be "upon the amount of net profits made from premiums received on all insurances" effected in a certain manner. And by the 3rd section, the assessment, instead of being on an average of three years, was to be on the net profits of each fiscal year.

It was argued that the words "net profits" appearing in these enactments raised a strong implication that the Legislature meant by "income" something different from "net profits." This argument has undoubtedly some force, but is not of sufficient cogency to justify an interpretation being given to the word "income," as applied to a commercial business, other than that which it naturally bears. The employment of different language in the same Act may, in some cases, help to shew that the Legislature had in view different objects, but a change in language cannot be relied on as furnishing a general rule of construction, and the weight to be given to such changes must depend on a view of the entire enactments in which they occur, and the degree of ambiguity existing in the language to be construed. The Act of 1859, in directing that insurance companies were to be assessed on an average of their profits for three years, made separate provision for them; and it may have been thought that, as these companies are not trading companies, and their receipts consist only of fixed and definite sums in the shape of premiums, these sums might be considered and treated as the "income" of the companies, if that word had been used in the special legislation relating to them. In the Act of 1871 premiums are expressly mentioned; the assessment being "upon the amount of net profits made from premiums." On the other hand an argument favourable to the appellants may be derived from these provisions. Why, it was asked during the argument, should insurance companies be assessed upon their net profits only, and other foreign companies and traders, not on their net profits, but on the aggregate of the items of profit appearing in the accounts of the year, without reference to the cost and losses incurred in carrying on the business in which they were earned? The answer given to this question was that it may have been thought desirable for the protection of property in St. John's to encourage the establishment of branches of fire insurance companies in the city. But this answer is not an adequate one, for it would seem to be equally desirable to encourage foreign banks and other companies bringing

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capital to the city to establish themselves in it. Besides, the answer, such as it is, cannot apply to marine insurance companies, for they too are assessed on net profits only, "wherever the subject-matter of insurance may be." It is to be observed that the consequence which would follow from the appellant's construction of income, namely, that the bank, in years of loss, would contribute nothing to the city, and which was held to furnish a reason against that construction, would indisputably happen, in years of loss, in the case of insurance companies.

Their Lordships have come to the conclusion, upon consideration of the Act in question, that there is nothing in the enactment imposing the tax, nor in the context, which should induce them to construe the word "income," when applied to the income of a commercial business for a year, otherwise than in its natural and commonly accepted sense, as the balance of gain over loss; and consequently they are of opinion that where no such gain has been made in the fiscal year, there is no income or fund which is capable of being assessed.

The extracts from writers on taxation, which were cited by the Judges and at the bar, are not inconsistent with this conclusion.

The English cases which were referred to by the learned Chief Justice afford no support to the judgment appealed from. In the case of *Forder v. Handiside* (2), it was held that, under the provisions of the English Property and Income Tax Act (5 & 6 Vict. c. 35), s. 100, case I. rule 3, a company carrying on the business of ironfounders could not deduct from the net profits of the year a sum of money which had been set aside, in accordance with the terms of its deed of association, as a reserve fund for the purpose of meeting the depreciation of buildings and machinery. It is clear that, under the English Act, losses connected with or arising out of any business during the year would form a deduction from the profits; and in the very case referred to the repairs of buildings and machinery were allowed, as being a proper deduction from the net profits. Their Lordships

are at a loss to see how this case lends any support to the judgment, unless, indeed, the assumption of the Chief Justice that the losses of the business are to be treated as a loss of capital, and not of income, were tenable.

The observations of Lord Chelmsford and Baron Bramwell, in the case of *The Queen v. The Commissioners of the Port of Southampton* (1), were directed to the proper construction of the word "income" in one of a series of special Acts relating to the port of Southampton. By one of these Acts it was enacted that certain dues and duties should be paid to the commissioners of the port, and directions were given as to their appropriation. By a subsequent Act creating a dock company in the port, whose operations might tend to diminish the revenue of the commissioners arising from their dues and duties, it was enacted that the dock company should pay to the commissioners such annual sum as should be sufficient to make up the annual income of the commissioners from the dues and duties they were authorised to take and receive under the first Act. It is plain that income in the later Act meant the total amount of the dues and duties payable to the commissioners under the former Act. The decision was to that effect, and that a particular outgoing could not be deducted. The observations cited were addressed to the language and meaning of these special Acts, and have no material bearing upon the construction of the Act now in question.

Their Lordships have not thought it necessary to consider the definite deductions to be made from profits, since the Special Case neither raises this question nor contains the materials for deciding it. When an enquiry of this kind has to be made, it may be found that income in the Act now in question cannot be construed otherwise than as it is defined in the General Assessment Act of the province (38 Vict. c. 6), s. 4, though that Act may not authoritatively govern the construction.

In the result, their Lordships will humbly advise Her Majesty to reverse the judgments appealed from, and in lieu thereof to declare and order that, upon

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the facts stated in the Special Case, neither the bank nor its manager is liable to be assessed in the sum of 1,725 dollars, or any part thereof, for the fiscal year, 1875, under the Acts relating to the assessing of rates and taxes in the city of St. John's. The respondents must pay the costs of this appeal.

Solicitors—Bompas, Bischoff & Dodgson, for appellant; Linklater, Hackwood, Harrison & Brown, for respondents.

1881. }
Jan. 19. } *In re NAPIER'S PATENT.*

Letters Patent—Prolongation—Limited Use.

Prolongation of letters patent will in some cases be granted limiting the use to certain purposes.

This was a petition for an extension of the term of letters patent granted to the petitioner for an invention called "a differential break," as applied to windlasses and cranes.

Mr. Aston and Mr. Macrory, for the petitioner.

The Attorney-General (Sir H. James) and *Mr. A. L. Smith*, for the Crown.

SIR MONTAGUE SMITH delivered the judgment of their Lordships (1).—Their Lordships have felt some difficulty in ascertaining what is the precise nature of the invention which the patentee claims, in consequence of the somewhat obscure manner in which the specification is drawn, and the absence of any specific description of the claim made on the part of the patentee. The nature and extent of the invention, or the several inventions, of which the patentee seeks to have a monopoly are left to be inferred from the general description given in the specification.

(1) *Sir Barnes Peacock*; *Sir Montague Smith*; and *Sir R. P. Colvile*.

However, their Lordships think that it does appear sufficiently upon the specification that there is a claim for what the patentee calls a differential break, which in its application to windlasses and to cranes is an invention of considerable utility. It seems to consist of a band which passes round the periphery of the barrel of the windlass, so far as it is applicable to a windlass; and by means of the action of a differential lever—that is, a lever having arms of varying length, one being shorter than the other—the effect is obtained of a self-acting break which allows free motion in one direction of the barrel or wheel, and stops the motion when the reverse action is forced upon it. By the use of a windlass made according to the direction in the specification, and by combination of mechanism which contains this differential break, there is great facility given in veering out a cable, and in that way greater security is given to a vessel in times of distress and danger, and greater safety is insured to the men who work the machinery. Their Lordships have therefore come to the conclusion that, so far as regards the application of the differential break to windlasses it is an invention of value and, indeed, of considerable merit. There is also evidence that the invention may be usefully applied to a particular description of crane which has been called an overhead crane. But their Lordships have had no evidence that the application of the differential break to other machines which are mentioned in the specification has been productive of advantage. In the absence of that evidence their Lordships think that the prolonged patent should be confined to the machines which have been mentioned, namely, windlasses and travelling cranes. Their Lordships have had the accounts laid before them, and, so far as the Crown has been able to investigate them, no objection has been made to the result which those accounts shew; and it certainly does appear that the patentee and his son, to whom he assigned the patent, have made no profit, but, on the contrary, have sustained some loss.

Under these circumstances their Lordships think this is a case in which they

In re Napier's Patent.

may properly advise Her Majesty to prolong the letters patent limited to the machines which have already been mentioned, and they are disposed in this case to advise a prolongation for seven years. But the new letters patent will be restricted to the manufacture of differential breaks and clutches, or of either of them, as applied to windlasses and cranes in the manner described in the specification. The new letters patent must also be subject to the condition which has become now a usual one in cases of inventions which are likely to be required for use by the Government, that the Government and its contractors should be entitled to use the invention.

Solicitors—Bristow Hunt, for petitioner; Solicitors for the Treasury, for the Crown.

1881. } JOHN BATEMAN (*appellant*) v.
Feb. 23. } JAMES SERVICE (*respondent*).

Western Australia—Joint-Stock Companies Ordinance, 1858, Application of—Foreign Company.

The liability of shareholders in a company incorporated in one country and carrying on business in another is regulated by the law of the country in which the company was incorporated.

The Joint-Stock Companies Ordinance, 1858 (Western Australia), does not apply to a company incorporated in another colony, or to a foreign company carrying on business in the colony, nor can such a company be registered under that ordinance.

This was an appeal from a judgment of the Supreme Court of Western Australia upon a Case stated for the opinion of the Court.

The Case stated that an action was brought for goods sold and delivered by the appellant, for the use of a company, at the request of their manager.

That previous to and at and within the times mentioned in the particulars of

demand, the respondent was, with more than ten other persons, a shareholder in the company, and was one of the first directors, and remained a director of the company until it ceased to carry on business.

That the organisation and government of the company were exclusively in Victoria, where its directors resided, and where it had its principal place of business. The business done by the company in Western Australia was to cut and prepare timber, and to take it to a port of shipment in the colony, from which it was exported to other places, some in the colony and some beyond its limits. These operations were conducted by the agent and manager of the company, who acted under a power of attorney from the company.

The company took no steps to procure its incorporation with limited liability in Western Australia, under the Act of the Western Australian Legislature, nor had the company ever been registered under the Western Australian Joint-Stock Companies Ordinance, 1858.

By the Joint-Stock Companies Ordinance, 1858, of the colony of Western Australia, it is by section 4 enacted, "That if more than ten persons shall, after the 1st day of January, 1860, carry on in partnership any trade or business, having gain for its object, unless they are registered as a company under the now stating ordinance, or are incorporated or otherwise legally constituted by or in pursuance of some private ordinance, royal charter or letters patent, every person so acting shall be severally liable for the payment of the whole debts of the partnership, and may be sued for the same without the joinder in the action or suit of any other member of the partnership."

The question submitted for the opinion of the Court was whether, under the circumstances above set forth, the respondent was liable for the payment of the appellant's claim, the same being for a debt due to the appellant from the company incorporated in Victoria, as therein mentioned, but not registered in accordance with the Western Australian Joint-Stock Ordinance, 1858, and whether

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the respondent could be sued for such debt without joinder in the action of the other members of the company.

The Supreme Court gave judgment in favour of the respondent.

From this judgment the present appeal was brought.

Mr. Wills and Mr. Horne, for the appellant.—The Joint-Stock Companies Ordinance, 1858, has, by section 4, given a right of action against the respondent, in consequence of his non-compliance with the conditions of the ordinance with regard to registration. The contract sued upon must be presumed to have been made according to the law of the colony, and that the parties intended to bind themselves accordingly. The respondent, as a member of a company formed in the colony of Victoria for the purpose of carrying on business in Western Australia, was bound in respect of the transactions of the company by the law of the colony in which the business was carried on.

They referred to *The General Steam Navigation Company v. Guillou* (1), *Newby v. Von Oppen* (2), *Princess of Reuss v. Bos* (3), *Smith v. Anderson* (4).

Mr. Benjamin and Mr. Romer, for the respondent.—The appellant gave credit to and contracted with the Rockingham Jarrah Timber Company (Limited), or its agent, and not to the individual shareholders of that company. The company, so far as the laws of Western Australia are concerned, is a foreign corporation, and as such is entitled to trade in the colony of Western Australia. It was not a partnership within the meaning of section 4 of the Western Australian Joint-Stock Companies Ordinance, 1858. The respondent did not trade in Western Australia, or contract, or trade, or have any dealings with the appellant.

They referred to *Lindley on Partner-*

ship, vol. i. p. 333; *Story's Conflict of Laws*, 7th ed. s. 29.

SIR RICHARD COUCH delivered the judgment of their Lordships (5).—This is an appeal from a judgment of the Acting Chief Justice of Western Australia, upon a Case which was stated for the opinion of the Court. The Case states that "previous to and at and within the terms mentioned in the particulars of demand, and subsequent thereto, the defendant was, with more than ten other persons, a shareholder in, and he was also one of the directors of, a company which was duly formed, incorporated or registered in the colony of Victoria, according to the laws in force in that colony in that behalf, under the style of 'The Rockingham Jarrah Timber Company (Limited),' and all the shareholders except two," who are named, resided, and those two now reside, out of Western Australia, and out of the jurisdiction of the Court; that "the company," as stated in the memorandum of association, was formed in Victoria for the object, amongst others, "to buy, sell or otherwise deal in Jarrah timber and other timber in Western Australia or in any other part of the world." The case then states the registration of the company in Victoria and its incorporation there, and that the organisation and government of the company were exclusively in Victoria, where its directors all resided, and where it had its principal place of business; that the company carried on business on a large scale in Victoria, and that its operations in Western Australia were conducted by Mr. William Wanliss, the then local agent and manager of the company, who acted under a power of attorney, but that the company was satisfied with its incorporation and privileges of limited liability acquired in Victoria, and took no steps to procure its incorporation with liability limited in Western Australia, either by royal charter, letters patent or Act of the Western Australian Legislature; nor has it ever been registered under the Joint-Stock Companies Ordinance of 1858. It also states the mode in which

(5) Sir Barnes Peacock; Sir Montague E. Smith; Sir Richard Couch.

(1) 11 Mee. & W. 877; 13 Law J. Rep. Exch. 168.

(2) 41 Law J. Rep. Q.B. 148; Law Rep. 6 Ch. D. 511.

(3) 40 Law J. Rep. Chanc. 645; Law Rep. 5 H.L. 176.

(4) 60 Law J. Rep. Chanc. 39; Law Rep. 15 Ch. D. 273.

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the business was carried on, and that the cheques by which payments were made were in the form—"The Rockingham Jarrah Timber Company (Limited)," signed by William Wanliss. It is not disputed that the business was carried on by William Wanliss, in Western Australia, as the agent of a limited company incorporated in Victoria. The transactions were entered into by him as such agent, and the credit was given to such a company. The question in the case was, whether the defendant, who was a shareholder in the company and one of the directors, could be made liable for the debt which had been contracted by Wanliss as its agent.

In the argument for the appellant it was conceded that the general principle was, as stated by Mr. Justice Lindley in his work on Partnership, "That if a company is incorporated by a foreign government, so that by the constitution of that company the members are rendered wholly irresponsible, or only to a limited extent responsible, for the debts and engagements of the company, the liability of the members as such would be the same in this country as in the country which created the corporation." But it was contended that the Legislature of Western Australia had a right, if it thought fit, to annex any kind of condition to the carrying on business in their own territory, and that, by the construction which should be put upon the ordinance of 1858, it had enacted that unless a foreign corporation carrying on business in Western Australia complied with this ordinance and was registered according to its provisions, its individual members should be liable to be sued for its debts. It was stated, and properly, that the real question in the case was whether the Western Australian Legislature so enacted.

In considering that question, we may first look at the principle which is laid down by Story, and quoted by the Chief Justice in his summary of the argument for the plaintiff, in these words: "In the silence of any positive rule affirming or denying or restraining the operation of foreign laws, Courts of justice presume the tacit adoption of them by their own government, unless they are repugnant

to its policy or prejudicial to its interests." Therefore, we have to see whether, upon the true construction of this ordinance, the Legislature of Western Australia has said that a company incorporated in another colony or in a foreign country, not having complied with its provisions, cannot carry on business or make contracts in Western Australia by its agent without its members being liable individually for its debts or engagements.

Now an examination of the ordinance appears to shew that this was not the intention. Its title is, "An Ordinance for the incorporation and regulation of Joint-Stock Companies and other Associations, and for limiting the liability of certain of the same." The preamble shews that one of the objects was that members of joint-stock companies should be enabled to limit the liability for the debts and engagements thereof to which they are or would be subject. The 4th section is: "If more than ten persons shall, after the 1st day of January, 1860, carry on in partnership any trade or business having gain for its object, unless they are registered as a company under this ordinance or are incorporated, or otherwise legally constituted, by or in pursuance of some private ordinance, royal charter or letters patent, every person so acting shall be severally liable for the payment of the whole debts of the partnership, and may be sued for the same without the joinder in the action or suit of any other members of the partnership." These words are not descriptive of a corporation carrying on business in Western Australia by its agent. You cannot say that a corporation is ten persons or more carrying on business. It may or may not be that the corporation which was formed in Victoria consists of more than ten persons. That is not a matter to be enquired into in Western Australia. The whole enactment appears to be applicable to a case where persons intended to commence business in Western Australia in partnership; and if there were more than ten, then, unless registered as a company, each might be sued for the whole debts of the partnership without joinder of any other members of it. It appears to refer to a company

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proposed to be formed for the purpose of carrying on business in Western Australia—not to a corporation existing in another place and coming to Western Australia to carry on some business there through its agents. The case of such a corporation does not appear to have been contemplated by this section, and the presumption certainly would be, according to the authorities before mentioned, that this was not intended. It is not to be presumed that there was an intention, contrary to the comity of nations, to prevent a foreign incorporated company carrying on business at all in the colony, because there would be so many difficulties in the way of a foreign incorporated company registering its members in accordance with the provisions of this ordinance that practically it could not do so. Then the 5th section contains words which shew that what was meant is, not an existing incorporated company coming to Western Australia to trade, but a company which was to be formed there. It speaks in several places of the proposed company. And section 18, and other sections which have been referred to by Mr. Benjamin in his argument, shew that in many instances it would be impossible for a foreign company to comply with the requirements of this ordinance. Section 18 says that "Once in every year a list shall be made of the persons who on the fourteenth day succeeding the day on which the ordinary general meeting of the company, or, if there is more than one ordinary meeting in each year, the first of such ordinary general meetings, is held, are the holders of shares in the company;" and section 35 provides that there shall be a general meeting of the company held once at least in every year. In this instance there appears to have been no shareholder in Western Australia, and it might frequently occur that there would be no shareholder in the foreign company resident there. Consequently those provisions could not be complied with.

The whole scope of this ordinance appears to their Lordships to be opposed to the view that it was intended to apply to a company which was incorporated elsewhere. Its object was one which might

well be contemplated by the Legislature of Western Australia, namely, that persons there who wish to carry on business in partnership with a limited liability for the debts and engagements thereof, if there were more than ten of them, should be registered; but it was not meant to apply to foreign corporations, or companies incorporated elsewhere and properly and lawfully carrying on business as such.

This is in accordance with the decision of their Lordships in the case of *Bulkeley v. Schutz* (6), where it was held that "A railway company and a partnership complete and existing in a foreign country is not within the purview of the English Joint-Stock Companies Acts of 1856 and 1857, so as to enable Her Britannic Majesty's Consular Court in Egypt to issue a sequestration against such of the members of the company as were resident within the jurisdiction of that Court for not complying with an order of that Court to register the company as one of limited liability under the English Acts." The company there, being a complete and existing company, could not be registered as one of limited liability under the English Acts. Applying that decision to the present case, it is an authority that this company, being duly registered under the ordinance of the colony of Victoria, and incorporated there, could not be again registered as a company in Western Australia. It was mentioned in the course of the argument, that it would not be possible so to register it without, as it were, first disintegrating the company, and making it cease to be, as far as Western Australia is concerned, a corporation at all. But it is conceded on the part of the appellants, and appears from the case, that it was carrying on business in Western Australia, and was dealt with and given credit to, as an existing company. It appears, therefore, to their Lordships that the contention on the part of the appellant that this ordinance is to be construed as prohibiting this company from carrying on its business in Western Australia as a corporation, and making the individual shareholders liable, cannot

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be supported. That was not the intention of the Legislature of Western Australia. It was not intended that where business was carried on in this way by the agent of a corporation, and credit was given to it through its agent, the individual shareholders should be made liable.

Their Lordships, therefore, will humbly advise Her Majesty that the judgment which is appealed from be affirmed, and the appeal dismissed with costs.

Solicitors—Wilkinson & Drew, for appellant;
West, King, Adams & Co., for respondent.

1881.
May 14.

{ WILLIAM MATTHEW HUTCHINSON
GIBBONS (*appellant*) v. WIL-
LIAM MATTHEW HUTCHINSON
GIBBONS (*a minor*) (*respon-*
dent).

New South Wales—Will—"Shall be born"—Construction.

A testator devised his real estate to the use of his grandsons for life, as tenants in common, with remainder to their respective sons in tail male, with a proviso "that if any person whom I have made tenant in tail male of my said estate shall be born in my lifetime, then and in such case I revoke the devise so made to him. In lieu thereof I give and devise the hereditaments comprised in such devise and appointment to the use of the same person respectively for the term of his or her natural life, and, after his or her decease, to the use of his or her first and every other son successively, according to their respective seniorities in tail male":—Held, that the words "shall be born" referred to a tenant in tail born after the date of the will, and that the son of a grandson living at that date took an estate tail under the will.

This was an appeal from an order of the Supreme Court of New South Wales, affirming the decree of the primary Judge in equity of that Court.

On the 19th of March, 1879, a bill was filed in the Supreme Court against the appellant William Hutchinson Gibbons, and Mackenzie Bowman, Thomas McCulloch, George Hill the younger, Andrew Hardie McCulloch the younger, and Septimus Alfred Stephen, praying that it might be declared that the respondent and the defendants were respectively entitled to the hereditaments called "Golden Grove Farm," in certain parts or shares.

The facts were as follows:—

William Hutchinson, late of Sydney, in the colony of New South Wales, esquire, made and executed his last will and testament in writing dated the 20th of December, 1845, whereby among other bequests and devises the testator devised his estate called "Golden Grove Farm" as follows:—

"To the use of my grandsons William Hutchinson Gibbons, Mackenzie Bowman, Thomas Ormonde Clarkson, Charles Roberts, junior, William Charles Nichols and Richard Roberts during their respective lives in equal shares and proportions as tenants in common, and as to the respective shares therein of each of them my said grandsons, after his decease; to the use of his first and every other son successively according to seniority of birth in tail male, and on failure of the issue male of any one or more of my said grandsons, then and so often as the same shall happen I give and devise as well the share or respective shares originally limited to the grandson whose issue shall so fail as the share or respective shares which by virtue of this present clause shall have become vested in him or them or his or their issue male; to the use of the other or others of my said grandsons during his or their life, or respective lives, in equal shares as tenants in common: And after the decease of such last-mentioned grandsons, then I give and devise the share or shares lastly hereinbefore limited to him to his first and every other son successively according to seniority of birth in tail male, and if there shall be a failure of such issue of all my said grandsons but one of them, I give and devise the entirety of all the said estates, messuages and tenements, hereditaments, houses and premises to

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the use of such only grandson for his life, and after his decease to the use of his first and every other son successively according to their respective seniorities in tail male."

The testator also thereby devised other properties to divers other persons for life with remainders to their sons successively in tail male, and also devised other properties to persons therein named in tail male, and a proviso was added by him at the end of his will in the words following; that is to say:—

"Provided always that if any person whom I have made tenant in tail male of my said estate shall be born in my lifetime, then and in such case I revoke the devise so made to him; in lieu thereof I give and devise the hereditaments comprised in such devise and appointment to the use of the same person respectively for the term of his or her natural life, and after his or her decease to the use of his or her first and every other son successively, according to their respective seniorities in tail male."

The testator died on or about the 26th of July, 1846, and the will was proved in the Supreme Court of New South Wales.

Thomas Ormonde Clarkson and William Charles Nichols had both died without issue, whereby the hereditaments became divisible in equal fourths. Mackenzie Bowman never married, and became insane.

William Kenny Gibbons was the eldest son of the appellant, and was born on the 24th of October, 1844, before the date of the will.

By a disentailing deed dated the 31st of July, 1866, the said William Kenny Gibbons conveyed to the appellant his share and interest in the Golden Grove Farm in fee.

The respondent was the eldest son of the said William Kenny Gibbons and claimed that under the proviso he was entitled to an estate in tale male in remainder in one equal fourth part, and in one equal third part in another fourth part of the said hereditaments, and that the said William Kenny Gibbons was entitled only to a life estate therein.

The case came on for hearing, and was

referred to the Master in Equity of the Supreme Court to enquire and report who were the parties interested in the hereditaments, and for what respective estates and shares.

On the 16th of October, 1879, the Master reported that if under the will of William Hutchinson, the testator, William Kenny Gibbons took a freehold estate in tail male, the respondent, William Matthew Hutchinson Gibbons, was not interested and had no estate therein; but if under the said will William Kenny Gibbons took only a life estate in such hereditaments and premises, then the freehold estate in remainder in one-fourth of the hereditaments and premises claimed by the appellant was vested in the respondent.

On the 5th of December, 1879, the cause came on to be heard upon further consideration before the primary Judge in Equity, who made a decree whereby he declared that under the will of William Hutchinson the said William Kenny Gibbons only took a life interest in the said hereditaments, and that the freehold estate in remainder in one-fourth part of the said hereditament claimed by the appellant was vested in the respondent.

On the 22nd of June, 1880, the cause was heard on the appeal of the appellant from the decree of the primary Judge. Judgment was delivered in favour of the respondent.

The present appeal was from this order.

Mr. Eddis and Mr. Serrell, for the appellant.—Under the devise of the hereditaments William Kenny Gibbons took an estate in tail male. He barred the entail, and conveyed the hereditaments to the appellant in fee-simple. The proviso did not affect or alter the estate in tail male of William Kenny Gibbons. The proviso, upon the true construction, only applied to such persons as were born after the date thereof. A construction of the proviso, which would make it include persons already born at the date of the will, would be at variance with the natural interpretation of the proviso, and would produce ambiguity in the will, and defeat the intention of the testator. They

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referred to *Co. Lit.* 20b, *Hewet v. Ireland* (1), *Doe v. Hallett* (2), *In re Sheppard's Trusts* (3), *Almack v. Horne* (4), *Early v. Benbow* (5), *Storrs v. Benbow* (6), *Loring v. Thomas* (7) and *Sturges v. Pearson* (8).

Mr. Mackeson and *Mr. W. Owen*, for the respondent.—Upon a true construction of the will the respondent took an estate tail, and William Kenny Gibbons only took an estate for life. The proviso contained in the will applied to all tenants in tail born in the lifetime of the testator whether prior to or after the date of the will. The words “shall be born in my lifetime” have a technical meaning. They include all persons born before or after the date of the will. The general intention of the testator was to tie up his estate for as long as the rule against perpetuities would permit. All the descendants born in the testator's lifetime were to take life estates only under the will. The proviso applies to a class, and William Kenny Gibbons was one of that class. They referred to *Jarman on Wills* (3rd ed.), vol. ii. p. 168, *Hebblethwaite v. Cartwright* (9), *Wynne v. Wynne* (10), *Seymour v. Lucas* (11), *Yarnold v. Moorhouse* (12), *Barnes v. Jennings* (13), *Manning v. Chambers* (14), *Trappes v. Meredith* (15), and to *Bythewood's Conveyancing* (3rd ed.), vol. ix. p. 830.

SIR RICHARD COUCH delivered the judgment of their Lordships (16).—This is an appeal in a suit brought in the Supreme

Court of New South Wales by Richard Hutchinson Roberts against the appellant and five other persons, praying that it might be declared that the plaintiff and the defendants were respectively entitled to certain hereditaments and premises called “Golden Grove Farm” in the parts or shares in the pleadings mentioned, and that the same might be sold or partitioned, and for consequent relief. On the hearing on the 25th of June, 1879, a decree was made, directing a reference to the Master of the Supreme Court, to enquire and report who were the parties interested in the said hereditaments and premises, and for what estates and interests, and in what shares and proportions, and whether they were parties to the suit, and that the respondent, the eldest son of William Kenny Gibbons, should be served with notice of the decree.

On the 16th of October, 1879, the Master reported that if, under the will of William Hutchinson, the testator in the pleadings mentioned, William Kenny Gibbons took a freehold estate in tail male in the said hereditaments and premises, the respondent, William Matthew Hutchinson Gibbons, the younger, was not interested, and had no estate therein, and was not a necessary party to the suit, and the plaintiff and the defendants were the only necessary and proper parties thereto; but if, under the will, William Kenny Gibbons took only a life estate, then the freehold estate in remainder in one-fourth of the hereditaments and premises claimed by the appellant was vested in the respondent, who would be a necessary party to the suit. On the hearing upon further consideration before the primary Judge in Equity of the Supreme Court, on the 5th of December, 1879, a decree was made, declaring that under the will William Kenny Gibbons took only a life interest, and that the freehold estate in remainder in one-fourth of the hereditaments and premises was vested in the respondent, and that he was a necessary party to the suit, and the pleadings were directed to be amended by making him a party as defendant. This was done, and, on the 22nd of June, 1880, the cause came on to be heard on

(1) 1 P. Wms. 426.

(2) 1 M. & S. 124.

(3) 1 Kay & J. 269.

(4) 1 Hem. & M. 630; 32 Law J. Rep. Chanc. 304.

(5) 2 Coll. 342; 15 Law J. Rep. Chanc. 169.

(6) 2 Myl. & K. 46.

(7) 1 Dr. & S. 614; 30 Law J. Rep. Chanc. 789.

(8) 4 Madd. 411.

(9) Ca. t. Talb. 31.

(10) 2 Keen, 778.

(11) 1 Dr. & S. 177; 29 Law J. Rep. Chanc. 841.

(12) 1 Russ. & M. 364.

(13) 35 Law J. Rep. Chanc. 675; Law Rep. 2 Eq. 448.

(14) 1 De Gex & S. 282.

(15) 41 Law J. Rep. Chanc. 237; Law Rep. 7 Ch. App. 248.

(16) Sir Barnes Peacock; Sir Montague E. Smith; Sir Robert P. Collier; Sir Richard Couch; and Sir Arthur Hobhouse.

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the appeal of William Matthew Hutchinson Gibbons, the present appellant, before three Judges of the Supreme Court, when two of them, one being the primary Judge, delivered judgment in favour of the respondent, and affirmed the decree and dismissed the appeal. The judgment of the third Judge was in favour of the appellant.

The present appeal is from that affirmation.

William Hutchinson, by his will, dated the 20th of December, 1845, among other bequests and devises, devised his estate called "Golden Grove Farm," after certain estates which have since determined, as follows—[His Lordship read the devise].

The testator also devised many other properties to other persons for life, with remainders to their sons successively in tail male. In many of these devises the words used are "to the use of her (or his) first and every other son successively according to seniority of birth, and the heirs male of the body of such son" (or "in tail male"). In two (to the children of his daughter Martha Roberts) the words are "to the use of all the children, if more than one, now born or hereafter to be born of the said Martha Roberts by her present husband, in equal shares and proportions as tenants in common in tail, with cross remainders between them in tail." In another part of the will there is a devise of certain property, after the decease of his daughter Elizabeth Bowman, to his grandsons, "Mackenzie Bowman and Frederick Bowman, sons of William and Elizabeth Bowman, for life as tenants in common, and as to the shares of each of them after his decease, to the use of his first and every other son successively in tail male; and on failure of the issue male of one of them the share to go to the other for life, and after his decease to his first and other sons successively in tail male." And this is immediately followed by a devise of other property after the decease of his daughter Elizabeth Bowman, "to the use of all the children now born or hereafter to be born of the said Elizabeth Bowman by her present husband William Bowman (excepting her eldest son, the said Mackenzie

Bowman, whom I consider I have hereinbefore sufficiently provided for), equally to be divided between them as tenants in common in tail male, with cross remainders between them in tail male." Thus Frederick Bowman, whom the testator had by name made a devisee for life in the previous devise, was to take by this devise, under the words "the children now born." Then, after a devise of certain property to his daughter Mary Holden for life, and after her decease to her husband John Rose Holden, if he should survive her, for his life, there is a devise of the property "to the use of Thomas Ormonde Clarkson and George Holden, both now residing with the said John Rose Holden and Mary Holden, in York Street aforesaid, and all and every other children or child of the said John Rose Holden and Mary Holden his wife (except an eldest son), to be divided in equal shares and proportions as tenants in common in tail male, with cross remainders between them in tail."

And at the end of the will there is this proviso—[His Lordship read the proviso].

The testator died on or about the 26th of July, 1846, and the will was duly proved in the Supreme Court of New South Wales. Thomas Ormonde Clarkson and William Charles Nichols both died without issue. Mackenzie Bowman has never married, and has been duly found to be a lunatic, and Thomas McCulloch, the committee of his estate, is one of the defendants.

William Kenny Gibbons is the eldest son of the appellant, the grandson of the testator, whom, in his will, he calls William Hutchinson Gibbons, and was born on the 24th of October, 1844, before the date of the will; and, by a disentailing deed dated the 31st of July, 1866, conveyed to the appellant his share and interest in the Golden Grove Farm in fee.

The respondent is the eldest son of William Kenny Gibbons, and claims that under the proviso he is entitled to an estate in tail male in remainder in one-fourth part, and in one-third part of another fourth part, of Golden Grove Farm, and that William Kenny Gibbons is entitled to only a life estate therein.

Of the two learned Judges who deli-

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vered judgment in favour of the respondent, one held that the proviso applied to all tenants in tail born during the testator's lifetime, whether before or after the date of his will. The other held that the expression in the proviso, "If any person whom I have made tenant in tail male of my said estate shall be born in my lifetime," might be appropriately applied to classes of unnamed devisees, of whom it would necessarily be uncertain whether those who would be alive at the testator's death might prove to have been born earlier or later, but not so to individuals whom the testator knew to be already in life, and whom he had specially singled out for remainders in tail. Both appear to have thought that the will must be construed as speaking at the testator's death, in which they were clearly mistaken.

The decision in this appeal depends upon the construction of this proviso. The learned counsel for the respondent contended that the words "shall be born in my lifetime" had a technical meaning, and must be construed so as to include all persons born before or after the date of the will, and they further contended that the general intention of the will was to extend the rule of perpetuities to its utmost extent; and that all persons born in the testator's lifetime were to have life estates only. But their Lordships do not accede to this view. Where indeed the word "issue" is a word of limitation it may be said that expressions coupled with it and pointing to future births receive a technical construction. In that case there is no gift to the issue; the mention of issue only operates to designate the quality of the interest given to their parent, and the distinction between future and existing issue altogether disappears. It is quite different when there is a direct gift to the issue. In that case the only rule of construction applicable is the common one, that words are to have their natural signification, and that legal and technical words are to have their legal and technical signification, unless there be something in the context of a particular instrument to shew the contrary.

As Vice-Chancellor Kindersley says in

Loring v. Thomas (7), where the words were "shall die," "The question is really one of intention, whether the testator intended to make a gift by way of substitution of the issue only of those who were living at the date of the will, or to include the issue of any predeceased child, and, of course, this intention can be taken from the language of the will." In cases of substitution an intention is implied on the face of the will that "if the precedent limitation by what means soever is out of the case the subsequent limitation takes place"—*In re Sheppard's Trusts* (3). But in this case the object of the proviso is to cut down certain definite gifts, and this is not to be done unless the intention is clearly expressed—*Sturges v. Pearson* (8). In the case of a proviso to take effect on the legatee becoming bankrupt, words of futurity are not allowed to operate to defeat the manifest intention of the testator, that the gift shall be a personal benefit to the legatee—*Troppe v. Meredith* (15).

Numerous cases, to which it is unnecessary to refer, have undoubtedly decided that the words "shall be born," in the absence of any context to explain them, are to be taken as words of futurity. But they have not a technical meaning, except in the case before mentioned, and their construction in other than the ordinary meaning depends upon the intention. It cannot be presumed in this case that the testator's intention was that all persons born in his lifetime, were to have life estates, since he has given an estate tail to two persons by their names in the will, and to another who, though not named in that devise, had been named in a previous one. Indeed, it was allowed in the argument that the testator did not intend to include named persons, or any one of whose existence he knew. Thus, if the respondent's construction be adopted, an exception would have to be introduced into the proviso after the words "any person." Again, the proviso is confined to tenants in tail male, and thus could not affect the devise to the children of Martha Roberts, which is contrary to the supposed intention. It results, therefore, from a consideration of the several de-

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vises, that no such general intention as has been contended for can be collected from the will, and the words of the proviso must therefore be construed according to their grammatical sense, and be taken to mean a tenant in tail male born after the date of the will. Arguments founded upon the supposed general intention of a testator require to be carefully watched. This was pointed out by the Lord Chancellor in *Giles v. Meleom* (17). He says, "I am led (18) to follow the argument as to the general scheme of the will. It is, I venture to say, a perilous and hazardous argument in most cases where it is used. I do not say that there are not cases in which it may be properly used, but certainly it is an argument which seeks to escape from the necessity of grappling with the meaning of particular words upon grammatical principles, and endeavours to get into a region of speculation as to the probable intent of the testator."

Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the Supreme Court, dated the 5th of December, 1879, so far as it declares that under the said will of William Hutchinson the said William Kenny Gibbons took only a life estate in the hereditaments and premises the subject-matter of the suit, and that the freehold estate in remainder in one-fourth part of the said hereditaments and premises claimed by the defendant, William Matthew Hutchinson Gibbons, was vested in the said infant William Matthew Hutchinson Gibbons the younger, and that he was a necessary party to the suit, and the order of the said Court on appeal, dated the 22nd of June, 1880, affirming the same and dismissing the petition of appeal therein mentioned; and to declare that the said William Kenny Gibbons took an estate in tail male in the said one-fourth part of the said hereditaments and premises, and that the said William Matthew Hutchinson Gibbons is now entitled to the same in fee-simple. The costs of the appellant and respondent of this appeal, being taxed as between solicitor and client, will be paid

out of the *corpus* of the share to which the appellant, the said William Matthew Hutchinson Gibbons, is declared to be entitled.

Solicitors—P. J. Gordon, agent for Thos. Salter, Sydney, New South Wales, for appellant; T. W. Denby, agent for F. J. Plomley, Sydney, New South Wales, for respondent.

1881. { EDWARD JAMES DANIELL (ap-
Feb. 22. { pellant) v. JAMES SINCLAIR
(respondent).

New Zealand—Mortgage—Compound Interest—Assent by Mortgagor—Mutual Mistake.

In the absence of express agreement compound interest cannot be charged on a mortgage account. A mortgagor, in the belief that he was liable to pay compound interest on his debt, assented to accounts made out with half-yearly rests, and charging interest on such rests:—Held, that such an assent was not binding in equity.

This was an appeal from an order of the Court of Appeal of New Zealand.

The suit was commenced by the respondent against the appellant, seeking an account of principal and interest moneys due to the appellant under a certain mortgage-deed, and to have an account of the proceeds of sale of certain portions of the mortgaged premises.

The appellant was a merchant carrying on business in London.

The respondent carried on business as a merchant in New Zealand.

The appellant on the 11th day of May, 1865, advanced 2,000*l.* to the respondent, and by an indenture of that date the respondent conveyed to the appellant certain land by way of mortgage, to secure the repayment of the sum of 2,000*l.* on the 11th of May, 1867, with interest thereon at the rate of ten per cent. per annum, and of any future advances at any time thereafter made by the appellant to the respondent. The indenture contained a power of sale in the events therein provided.

Default was made in payment of prin-

(17) 42 Law J. Rep. C.P. 122; Law Rep. 6 E. & I. App. 31.

(18) *Sic, sed qu.* "loth."

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principal and interest under the mortgage security, and the appellant, in making out and rendering accounts to the respondent, made them out on the footing of a mercantile account current, with rests, and the unpaid interest due from time to time was therein treated as added to the principal moneys and included in the balance due, and interest upon such balance was thenceforth debited and charged in the accounts between the appellant and the respondent, and accounts so kept were rendered and submitted to and approved of by the respondent.

On the 4th day of January, 1869, the respondent executed two deeds by way of security, made between the respondent of the one part, and one Stuart of the other part. Each of the said deeds contained recitals that the respondent was indebted to the said Stuart in the sum therein mentioned, and to Edward James Daniell, of Gresham House, in the city of London, merchant, in the sum of 2,487*l.* 12*s.* 2*d.*

The said Stuart by himself or his agents sold, under the two several deeds of the 4th of January, 1869, nearly the whole of the hereditaments comprised in the two deeds, and received the purchase-moneys, and thereout retained to himself all moneys to which he was entitled, and paid a considerable portion of such sale moneys to the appellant on account of the said sum of 2,487*l.* 12*s.* 2*d.*

In June, 1878, the respondent commenced an action against the appellant for accounts of the sums received by the appellant in respect of lands sold by him or sold by the said Stuart, and to redeem the land comprised in the mortgage-deed remaining unsold.

The only question in dispute between the parties was as to the right of the appellant to charge compound interest against the respondent in respect of the mortgage debt.

The cause was heard and judgment was given in favour of the respondent.

The appellant appealed to the Court of Appeal, and on the 4th of February, 1880, that Court dismissed the appeal.

From this judgment the present appeal was brought.

Mr. Benjamin and Mr. Everitt, for the

appellant.—The judgments of the Supreme Court and the Court of Appeal proceeded on erroneous conclusions of law. The accounts between the appellant and the respondent were taken and kept with half-yearly rests with the express assent and concurrence of the respondent. The appellant continued the credit given to the respondent upon the faith of his having agreed to and settled the accounts from time to time rendered to him on such footing. The account signed by the respondent was a stated and settled account. If the account was so stated, and settled and signed under a mistake as to the effect and construction of the mortgage-deed, it was a mistake of law and not of fact, and the respondent is not entitled to have such account set aside or to be relieved against such mistake.

They referred to *Mosse v. Salt* (1), *Clancarty v. Latouche* (2), *Crosskill v. Bower* (3), *Blackburn v. Warwick* (4), *Chambers v. Goldwin* (5), *Tompson v. Leith* (6), *Stewart v. Stewart* (7), *Kitchin v. Hawkins* (8), *Rogers v. Ingham* (9), *The Alliance Bank v. Broom* (10), *Parkinson v. Hanbury* (11), *Drew v. Power* (12), *Gething v. Keighley* (13), *Fergusson v. Ryffe* (14).

The Solicitor-General (Sir F. Herschell), Mr. Rigby and Mr. Chalmers, for the respondent.—The judgments of the Supreme Court of New Zealand, and of the Court of Appeal, were founded upon a correct appreciation of the facts, and were in accordance with the rules of equity as applied to the facts. Compound interest was not payable under the mortgage-deed of the 11th of May, 1865. No

- (1) 32 Beav. 269; 32 Law J. Rep. Chanc. 756.
- (2) 1 Ball & B. 420.
- (3) 32 Beav. 86; 32 Law J. Rep. Chanc. 540.
- (4) 3 You. & C. Exch. 99.
- (5) 9 Ves. 271.
- (6) 4 Jur. N.S. 1091.
- (7) 6 Cl. & F. 911.
- (8) Law Rep. 1 C.P. 22.
- (9) Law Rep. 3 Ch. D. 351.
- (10) 2 Dr. & S. 289; 34 Law J. Rep. Chanc. 266.
- (11) 36 Law J. Rep. Chanc. 292; Law Rep. 2 H.L. Cas. 1.
- (12) 1 Sch. & Lef. (Irish), 182.
- (13) 48 Law J. Rep. Chanc. 45; Law Rep. 9 Ch. D. 547.
- (14) 8 Cl. & F. 121.

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agreement was entered into that compound interest should be charged. The assent of the respondent to the accounts was given on the supposition that the appellant was authorised to charge compound interest. The mode in which the accounts were made out and the ratification or confirmation of accounts and admission of indebtedness on the part of the respondent proceeded on the supposition that the appellant had a right to charge compound interest.

They referred to *Roberts v. Kuffin* (15), *Rose v. Savory* (16), *Thomas v. Hawkes* (17), *Wilson v. Wilson* (18), *The Bank of Australia v. White* (19).

SIR ROBERT P. COLLIER delivered the judgment of their Lordships (20).—This was a suit instituted for the redemption of a mortgage, and an account of the principal and interest due. The defendant contended that compound interest was due, and whether the interest was to be simple or compound was the only question in the cause. The Court of First Instance gave judgment in favour of the plaintiff, with the exception of a small sum of compound interest, which the plaintiff by the deeds of further security to be afterwards referred to had converted into principal. This judgment was affirmed by the Supreme Court. From the latter judgment the present appeal is preferred.

The plaintiff is a merchant in New Zealand; the defendant a merchant in London. The declaration sets out a mortgage bearing date the 11th of May, 1865, for the purpose of securing payment of 2,000*l.*, advanced by the defendant to the plaintiff for two years, and of all such further and other sums (if any) as may at any time hereafter be due and owing by the mortgagor to the mortgagee on the balance of any account current hereinafter existing between the said parties hereto, or in respect to any future advances to

be made between the said parties in any account whatsoever. Then follows a covenant to pay interest at the rate of ten per cent. on the balance of account current after demand in writing, and to pay the principal sum on the 11th of May, 1867, and interest thereon at ten per cent. in quarterly payments.

The declaration further sets out two conveyances, dated the 4th of January, 1869, to one Stuart, for the purpose, in the first place, of securing a debt to Stuart; and secondly, of further securing the debt to the defendant, which the plaintiff acknowledged then to amount to 2,487*l.* 12*s.* 2*d.* (which addition of 487*l.* 12*s.* 2*d.* to the principal was composed partly of compound interest), with a power of sale to Stuart, for, in the first place, paying himself, and then making payments to the defendant. The declaration alleges sales by Stuart and the defendant, and some payments by Stuart to the defendant, and prays for an account of the principal and interest due on the mortgage, and a reconveyance.

The material pleas by the defendant are—First, that the moneys advanced by him were advanced on a mercantile account current; second, that it was agreed between plaintiff and defendant, both at the time of and immediately after the execution of the deed set out in the first paragraph of the plaintiff's declaration, that in taking and keeping the account current between the plaintiff and defendant half-yearly rests should be taken, and that the interest due on the half-yearly rests should be added to and become part of the principal moneys, and bear interest accordingly; and the accounts have always been so kept with the consent of the plaintiff, who has from time to time ratified accounts so kept, and admitted his indebtedness to the defendant of the whole amount shewn in such accounts, where interest has been computed upon half-yearly rests.

The defendant submitted to the taking of the accounts as prayed.

The plaintiff in reply denied the agreement.

The following are the material issues in the case, and the findings upon them by the jury:—

(15) 9 Atk. 112.

(16) 2 N.C. 145.

(17) 8 Me. & W. 140.

(18) 14 Com. B. Rep. 616; 23 Law J. Rep. C.P. 137.

(19) Law Rep. 4 App. Cas. 396.

(20) Sir Barnes Peacock; Sir Montague E. Smith; Sir Robert P. Collier; Sir Richard Couch.

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Was the amount of the plaintiff's indebtedness to the defendant on the 4th of January, 1869, the sum of 2,487*l.* 12*s.* 2*d.*?—Yes.

If so, was the said sum of 2,487*l.* 12*s.* 2*d.* composed of the principal sum of 2,000*l.* mentioned in the said deed of mortgage, and 487*l.* 12*s.* 2*d.* interest due in respect of the said principal sum?—Yes, except 15*l.* 7*s.* 8*d.*, deficiency in proceeds of wool consigned by plaintiff to defendant.

Was the said principal sum of 2,000*l.* advanced by the defendant to the plaintiff on a mercantile account current?—By direction, No.

Was any portion of the said sum of 2,487*l.* 12*s.* 2*d.* advanced by the defendant to the plaintiff upon a mercantile account current, and, if so, how much?—Yes, the said sum of 15*l.* 7*s.* 8*d.*, and no more.

Was it agreed by and between the plaintiff and defendant, after the execution of the deed set out in the first paragraph of the declaration, that in taking and keeping the accounts between the plaintiff and the defendant half-yearly rests should be taken, and that the interest due at such half-yearly rests should be added to and become part of the principal moneys, and bear interest accordingly?—No, unless such agreement ought in law to be implied from the plaintiff's accounts being so kept. But we find that he so consented on the supposition that a deed in the terms of the mortgage of the 11th of May, 1865, authorised the defendant to charge compound interest.

Have the accounts always been so kept?—Yes.

Has the plaintiff consented to the accounts being so kept, and has he ratified and confirmed in writing accounts so kept, and admitted his indebtedness as appearing by such accounts?—Yes.

No attempt was made at the trial to prove an actual agreement, either written or oral, to change the interest, as stipulated in the mortgage-deed, from simple to compound, and it seems clear that no such agreement was ever made. But it appeared that the plaintiff, under the belief that he was bound to pay compound interest on the mortgage, assented to accounts made out on the footing of half-yearly rests, and that, in particular,

on an account being sent to him stating a balance of 3,464*l.* 16*s.* 2*d.* as due on the 11th of May, 1872, part of which consisted of compound interest charged on the footing of half-yearly rests, he signed it as correct, and that in 1876 he sent to the defendant what he termed a sketch account, in which compound interest with yearly rests was calculated.

A Judge sitting in Banco adopted the finding of the jury, that no actual agreement to pay compound interest had been come to; he further came to the conclusion that both parties wrongly understood the mortgage-deed as requiring the payment of compound interest, and that no agreement to pay it could be implied from the transactions between the parties, such interest having been charged by the defendant and paid by the plaintiff under a common misapprehension of their rights. He therefore gave effect to the rule of law, which was undisputed, that without such an agreement simple interest only can be charged on the mortgage account. He treated, however, the deeds which stated that 2,487*l.* 12*s.* 2*d.* was due by the defendant on the 4th of January, 1869, as binding on him, and directed the Master to commence the account from that day, treating the whole of that sum as principal.

The judgment of the Court in Banco was confirmed by the Court of Appeal.

It appears that the defendant insisted, independently of the main question, that a direction should be given that the account prior to the 11th of May, 1872, should not be re-opened, contending that, even upon the assumption of there having been no agreement to vary the rate of interest under the mortgage, the account up to that time was settled, and could not be disputed. The Judge sitting in Banco declined to give such a direction, observing, "In my opinion, this is nothing more than a particular instance of that general acquiescence on the part of the plaintiff in the defendant's mode of stating the account between them with which I have already dealt; and, for the reasons already given, and on the authority already cited, his approval of the account on this occasion does not conclude him."

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The same view is taken by the Court of Appeal.

On the appeal before this board, this last is the only point now relied on, it not being contended that the settlement of account, if it were such, would not prove a contract to pay compound interest for the future.

Undoubtedly there are cases in the Courts of common law in which it has been held that money paid under a mistake of law cannot be recovered, and it has been further held that, under certain circumstances, the giving credit in account may be treated as so far equivalent to payment as to prevent sums wrongly credited being made the subject of set-off—*Skyring v. Greenwood* (21). But in equity the line between mistakes in law and mistakes in fact has not been so clearly and sharply drawn. In *Earl Beauchamp v. Winn* (22) Lord Chelmsford observes, "With regard to the objection, that the mistake (if any) was one of law, and that the rule 'ignorantia juris neminem excusat' applies, I would observe on the peculiarity of this case, that the ignorance imputable to the party was of a matter of law arising upon the doubtful construction of a grant. That is very different from the ignorance of a well-known rule of law; and there are many cases to be found in which equity, upon a mere mistake of the law, without the admixture of other circumstances, has given relief to a party who has dealt with his property under the influence of such a mistake."

In *Cooper v. Phipps* (23) Lord Westbury says, "Private right of ownership is a matter of fact, it may be also the result of matter of law, but if parties contract under a mutual mistake as to their relative and respective rights, the result is that the agreement is liable to be set aside, as having proceeded upon a common mistake."

In *McCarthy v. Decain* (24), where a person sought to be relieved against a renunciation of a claim to property, made under a mistake respecting the validity

of a marriage, the Lord Chancellor observes, "What he has done was in ignorance of law, possibly, of fact, but, in a case of this kind, this would be one and the same thing."

In *Livesey v. Livesey* (25) an executrix who, under a mistake in the construction of a will, had overpaid an annuitant, was permitted to deduct the amount overpaid from subsequent payments.

Undoubtedly the signature by the plaintiff of the account in question, if it stood alone, unexplained, would afford a strong presumption that an agreement to substitute compound for simple interest under the mortgage had been come to, and it was for the purpose of proving the agreement which the defendant had pleaded that the account was relied upon. Their Lordships accept the finding of the jury that no such agreement was in fact made; indeed there would seem to have been no consideration for it, because, although the defendant did not exercise his power of sale as soon as he might, there is no evidence that he ever bound himself or promised to show any forbearance or indulgence to the plaintiff. Their Lordships further agree with the Courts below, that both parties may be taken to have misunderstood the effect of the mortgage-deed. This being so, there was no intention to make a change in the rate of interest—no such question was discussed or considered. The accounts were drawn up and assented to by the parties under a common mistake as to their respective rights and obligations. Their Lordships are therefore of opinion that the signature of a particular account occurring in a series of accounts, all alike drawn up in error does not prevent it being re-opened upon the accounts under the mortgage being taken.

They will, therefore, humbly advise Her Majesty that the judgment appealed against be affirmed, and the appeal dismissed with costs.

Solicitors—Clarke, Rawlings & Clarke, for appellant; Hare & Fell, for respondent.

(21) 4 B. & C. 281.

(22) 2 Law Rep. E. & I. App. 234.

(23) 6 ibid. 170.

(24) 2 Russ. & M. 614.

(25) 3 Russ. 287

1881. { GEORGE NAPIER TURNER (*appellant*) v. WILLIAM WALSE (*respondent*).
May 21. {

New South Wales—Public Road—Dedication—User—Crown Lands Alienation Act, 1861, ss. 3 and 5.

The Crown Lands Alienation Act, 1861, of New South Wales enacts that any Crown lands may be dedicated to any public purpose under the provisions of the Act, but not otherwise.

Section 5 enacts that "the Governor may, by notice in the 'Gazette,' dedicate any Crown lands for any public road."

Twenty-one years before the passing of this Act, Crown land had been used as a public road, and the user continued after the passing of the Act:—

Held, that there was evidence of a dedication by the Crown prior to the Act, and that such evidence was fortified by the user continuing after the passing of the Act.

This was an appeal from the Supreme Court of New South Wales, discharging a rule *nisi* for a new trial which had been obtained by the appellant, the plaintiff in the action.

The declaration alleged that the respondent broke and entered the appellant's land and cut down the fences on the land.

The material plea was one which justified the trespasses on the ground that there was a highway across the appellant's land, that the fences obstructed the highway, and that the respondent passed along the highway and cut down the fences to remove the obstruction.

To this plea the appellant pleaded two replications, each of which stated that the alleged highway was a track across the plaintiff's land, while the same was Crown land, and that such track was used by persons travelling with stock, for travelling and driving their stock on and along the same, but that such track was never proclaimed or dedicated as a highway, and was never a way otherwise than as aforesaid.

Issue was joined on these replications.

The action was tried, and evidence was given of the alleged trespasses by

the respondent, and a Crown grant to the appellant of the land, dated the 1st of February, 1879, was put in. This Crown grant did not contain any reservation or exception of the alleged highway. On the part of the respondent, it was shown that for upwards of forty years the road fenced across by the appellant had been constantly used by the public.

The learned Judge directed the jury that user might be relied on in New South Wales as it might in England for the purpose of presuming and establishing dedication of a road over Crown lands as against the Crown, and that the user proved was sufficient to entitle the jury to presume dedication by the Crown of the road in question.

A verdict was found for the respondent.

The appellant obtained a rule *nisi* for a new trial, on the ground of misdirection.

The Supreme Court gave judgment and discharged the rule.

From this judgment the appeal was brought.

Mr. A. Wills and *Mr. W. Wills*, for the appellant.—The common law doctrines of dedication and user which prevail in this country cannot apply in a new country. The statutes of the colony define the mode of dedication by the Crown of land for public purposes. The dedication must take place in the way prescribed by the Act, and in no other way.

Mr. Holl and *Mr. J. D. Wood*, for the respondent, were not heard.

SIR MONTAGUE E. SMITH delivered the judgment of their Lordships (1).—This appeal arises in an action brought by the appellant against the respondent for a trespass on a plot of land purchased from the Crown under the provisions of the Crown Lands Alienation Act, 1861, of the statutes of New South Wales. He complained that the defendant had entered the land and pulled

(1) Sir Barnes Peacock; Sir Montague E. Smith; Sir Richard Couch; and Sir John Mellor.

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down some fences. The defendant pleaded that there was a public highway over the plot of land, and justified his acts in the proper use of that highway. The question in the action is, whether or not the defendant has proved that such a highway existed. The land before the grant, which is of the date of the 1st of February, 1879, belonged to the Crown. There was a suggestion that it had been leased for pastoral purposes, but there is no proof that any such lease had been made.

The evidence, though stated rather shortly by the learned Judge, Mr. Justice Hargrave, who tried the cause, is clear and explicit. It appears that for forty years before the commencement of the action there had been a road over and across the piece of land granted to the plaintiff, which had been used by the public with carriages, horses and cattle, and on foot. It appears to have been the main road between Enabelong and Condobolin. The mail coaches travelled that road; teamsters conveying the produce of the country, especially wool, used it; and, in fact, it had been used by the public for all purposes during this period, continuously and without interruption. Upon such evidence the Judge would be right, unless some positive restriction on the power of the Crown appeared, in directing the jury that they might presume a dedication of the road by the Crown to the public. The presumption of dedication may be made where the land belongs to the Crown, as it may be where the land belongs to a private person. From long-continued user of a way by the public, whether the land belongs to the Crown or to a private owner, dedication from the Crown or the private owner, as the case may be, in the absence of anything to rebut the presumption, may and indeed ought to be presumed.

The jury found for the defendant, whereupon an application was made to the Court by the plaintiff for a new trial, not on the ground that the verdict was against the evidence, but on the ground that the Judge had misdirected the jury. We have not the terms in which the learned Judge addressed the jury, and

can only obtain information of what he said from his own judgment in discharging the rule, and from the grounds stated in the rule *nisi* for a new trial. The plaintiff is, of course, confined to these grounds. They are—"That his Honour ruled that user in this colony may be relied on, in like manner as it may in England, for the purpose of presuming and establishing dedication of a road over Crown lands as against the Crown; and that the user proved in this case was sufficient to entitle the jury to presume dedication by the Crown of the road in question." The plaintiff does not complain in the first of these grounds, that, supposing the same evidence had been given in England, the direction would not have been right; but he complains of the ruling of the Judge that user may be relied on in the colony, in the same manner as it may be in England, for the purpose of raising the presumption of dedication of a road over Crown lands. Their Lordships are not aware of any reason in point of law why the same presumption from user should not be made in the case of Crown lands in the colony as would be made in England, apart from the statute to which attention will be presently called; though the nature of the user, and the weight to be given to it, may, of course, vary in each particular case.

The main contention of the appellant was that the Crown Lands Alienation Act has placed restrictions on the power of the Crown to dedicate roads in the colony, and that the effect of that Act was not sufficiently regarded by the Judge in his direction to the jury. The Act was passed in the year 1861, and section 3 enacts this: "Any Crown lands may lawfully be granted in fee-simple or dedicated to any public purpose under and subject to the provisions of this Act, but not otherwise." Then section 5 enacts: "The Governor, with the advice aforesaid, may, by notice in the *Gazette*, reserve or dedicate, in such manner as may seem best for the public interest, any Crown lands for any railway or railway station, any public road, canal or other internal communication." It is said that, taking these two provi-

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together, any dedication by the since 1861 must be in the manner d—that is, by the Governor, by the *Gazette*, and not otherwise. That to be the effect of the evidence in this case, as has showed a continuous user of twenty years, which gives (died in 1880) a user of before the statute of operation, and during the Crown held these a right, *jure cormæ*, with full to dedicate. Their Lordships have no difficulty in saying that the Judge was right in directing the jury that from the user of twenty-one years before the statute, continued since 1861 down to the time of the action without any interruption or interference on the part of the Crown, they might presume a dedication prior to the statute, and at a time when the Crown had power to dedicate. A further objection was that the Judge did not point out to the jury that the evidence of user after 1861 was of different and less weight than that of the previous user; but if there is any difference, the evidence of continuous and unbroken user since 1861 is stronger to raise a presumption of an old dedication than the earlier evidence, because, if there had not been an old dedication prior to the passing of the Act of 1861, the officers of the Crown might reasonably have been expected to stop the unauthorized use of the land by the public, and to put down acts which would have been, upon the hypothesis of the appellant, a series of trespasses.

Their Lordships think it right to observe that one of the learned Judges, Sir William Manning, is scarcely correct in the way in which he regards the evidence. He says, "There was then a further difficulty. It was, his Honour took it, plain that before 1861 (the date of the Crown Lands Alienation Act) the right by user was at least inchoate; did it follow, then, that the user, then enjoyed for twenty-one years, would be put an end to by that Act? Would not the inchoate right run on to maturity rather than be blocked by the intermediate passing of this Act?" This lan-

guage does not accurately express the presumption which arises from long-continued user. It is not correct to say that the early user establishes an inchoate right capable of being subsequently matured. If the right had been inchoate only in 1861, the argument of the appellant that it could not have been matured or acquired after 1861, except in the mode prescribed by the Act, would have had great force. The proper way of regarding these cases is to look at the whole of the evidence together, to see whether there has been such a continuous and connected user as is sufficient to raise the presumption of dedication; and the presumption, if it can be made, then, is of a complete dedication, coeval with the early user. You refer the whole of the user to a lawful origin rather than to a series of trespasses. It may be that in this case the evidence of user prior to 1861 was alone sufficient to establish the presumption of dedication; but the strength of that presumption is increased by the subsequent user, and would certainly have been much diminished if the user had been discontinued after 1861. In this case their Lordships have no doubt that, the user being continuous, the direction is right, and if the direction is right, it is not contended that the verdict is wrong.

There are two cases where the principles which govern this case have been recognised: *The Queen v. The Inhabitants of East Mark* (2) and *The Queen v. Petrie* (3). It may be observed that in the present case the evidence is very much stronger to raise the presumption of a dedication at the time when the Crown was competent to dedicate, than the evidence which was held sufficient to establish such a presumption by some possible owner of the fee in *The Queen v. Petrie* (3). In that case, after seven years' user without interruption of the road in question, the Court held that the Judge was right in directing the jury that they might from that user presume a dedication from an owner of the fee; though it was not proved that during

(2) 11 Q.B. Rep. 877; 17 Law J. Rep. Q.B. 177.

(3) 4 E. & B. 737; 24 Law J. Rep. Q.B. 167.

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that time there was anyone who was absolute owner of the fee, but it being possible that such an owner then existed.

There is only one other point which need be adverted to. The learned counsel for the appellant referred to the Act 5 & 6 Vict. c. 36, of the Imperial Parliament, as in some way limiting the power of the Crown to dedicate roads. Their Lordships, on looking at that Act, find no such restriction in it. Section 2 enacts "that the waste lands of the Crown in the Australian colonies shall not, save as hereinafter is excepted, be conveyed or alienated by Her Majesty." Section 3 is: "Provided always, and be it enacted, that nothing in this Act contained shall extend, or be construed to extend, to prevent Her Majesty, or any person or persons acting on the behalf or under the authority of Her Majesty, from excepting from sale, and either reserving to Her Majesty, her heirs and successors, or disposing of in such other manner as for the public interests may seem best, such lands as may be required for public roads or other internal communications." These enactments leave Her Majesty's power with regard to public roads as it existed by the common law, and do not interfere with her right to dedicate lands for this purpose.

Their Lordships think that this appeal fails; and they will, therefore, humbly advise Her Majesty to affirm the judgment of the Supreme Court of New South Wales, with costs.

Solicitors—Burton, Yeates, Hart and Burton, for appellant; Henry Kimber & Co., for respondent.

1881. { WILLIAM BLACKBURN (*appellant*)
May 20. { v. JOHN FLAVELLE (*respondent*).

New South Wales—Crown Lands—Conditional Purchase—Forfeiture—Sale by Auction.

The Waste Lands Act, 1861 (New South Wales), by section 13, enacts "that any person may tender to the land agent of the district a written application for conditional purchase of waste lands, and pay a deposit, and that if no other like application and deposit for the same land be tendered at the same time such person shall be declared the purchaser."

Section 18 prescribes the conditions of purchase, and enacts that on default of compliance with the requirements of the section the land shall revert to the Crown and be liable to be sold by auction.

The conditional purchaser of waste land under the Act having failed in the performance of the conditions, the appellant tendered for the land and was declared to be the conditional purchaser:—Held, that the appellant could not be accepted as such purchaser, and that the lands must be sold by public auction.

This was an appeal from the Supreme Court of New South Wales.

The appellant in the Court below sought to recover damages from the respondent for trespass committed on certain land in the parish of Berrembed, in the county of Bourke, in the colony of New South Wales.

The respondent pleaded by way of defence that he was not guilty; that the land in question was not the appellant's; and that the acts complained of by the appellant were done by the licence of one Arthur Albert Devlin, who, at the date of the acts of trespass, was in possession of the land as the lawful owner thereof.

It was admitted or proved at the trial of the action—That on the 30th of May, 1875, one Henry Woods conditionally purchased forty acres of Crown land, being portions of the land in question. That on the 10th of October, 1878, Woods having failed to comply with the conditions and provisions of section 18 of the Crown Lands Alienation Act, 1861, his

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purchase, described in the Government Gazette of the 4th of May, 1878, reverted to Her Majesty, and was notified to have become lapsed, and might be conditionally purchased. That on the 8th of August, 1878, one Devlin, mentioned in the plea, applied to purchase conditionally lands which included a portion of the forfeited land, and he was on that day declared by the land agent the conditional purchaser thereof. That on the 13th of March, 1879, the appellant applied to conditionally purchase a portion of the forfeited land, but the land agent refused to receive either his application or deposit, on the ground that Devlin had previously applied for it. That on the question being referred by the appellant to the Minister for Lands, he directed the land agent to accept the appellant's application as if made on the day it was originally tendered. This was accordingly done, and the deposit paid on the 15th of April, 1879.

The Crown Lands Alienation Act of 1861, by section 3, provides that—Any Crown lands (meaning “all lands vested in Her Majesty which have not been dedicated to public purposes or which have not been granted or lawfully contracted to be granted in fee-simple”—section 1) may be lawfully sold in fee-simple, “under and subject to the provisions of this Act, but not otherwise.”

Section 13: That from the 1st of January, 1862, “Crown lands” other than certain lands thereby specified (within the description of which the land in question did not fall), “and not containing improvements” . . . “shall be open for conditional sale by selection in the manner following; that is to say: Any person may, upon any land office day, tender to the land agent for the district a written application for the conditional purchase of any such lands, not less than forty acres nor more than 320 acres, at the price of 20s. per acre, and may pay to such land agent a deposit of twenty-five per cent. of the purchase-money thereof; and if no other like application and deposit for the same land shall be made at the same time, such person shall be declared the conditional purchaser thereof at the price aforesaid:

provided that if more than one such application and deposit for the same land, or any part thereof, shall be tendered at the same time to such land agent, he shall, unless all such applications but one be immediately withdrawn, forthwith proceed to determine by lot, in such manner as may be prescribed by regulations made under this Act, which of the applicants shall become the purchaser.”

By section 18, after specifying certain conditions of residence, improvements, and payment of the balance of purchase-money upon a conditional purchase under section 13, it is enacted as follows: “But in default of compliance with the requirements of this section the land shall revert to Her Majesty, and be liable to be sold by auction, and the deposit shall be forfeited.”

The verdict was entered for the respondent, with leave to move to enter a verdict for the appellant.

The judgment of the Court was delivered on the 25th of March, 1880, and it was held that, upon the true construction of the Crown Lands Alienation Act, 1861, a forfeited selection could not be reselected, but could only be disposed of by the Crown by auction, and therefore that as the appellant's title failed, the verdict for the respondent at the trial should stand and the rule be discharged.

From this judgment the appeal was brought.

Mr. A. Wills and *Mr. W. Wills*, for the appellant.—The appellant, at the time of the trespasses was rightfully in possession of the land as a conditional purchaser. The Crown lands which have been sold conditionally and subsequently forfeited may be again sold conditionally by the Crown. There is nothing in the Act to restrain the Crown resorting to conditional sale on failure by the first purchaser to fulfil conditions. The Act enables the Crown to sell by auction. They referred to *Drinkwater v. Arthur* (1) and to *O'Shanassy v. Joachim* (2).

Mr. Bompas and *Mr. Leach*, for the respondent.—If the land was capable of

(1) 10 Supreme Court N.S.W. 128.

(2) 45 Law J. Rep. P.C. 43; Law Rep. 1 App. Cas. 82.

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reselection the sale to Devlin was valid, or at least the claim of Devlin was a valid claim at the time that the appellant made his alleged selection. The sale to the appellant could only be by auction, as provided by section 18 of the Crown Lands Alienation Act. The language of the statute is clear. The object of the provision was to enable the original selector to be reimbursed for improvements. They referred to *Davenport v. The Queen* (3) and to *The Attorney-General of Victoria v. Ettershank* (4).

SIR BARNES PEACOCK delivered the judgment of their Lordships (5).—This case is a very important one, inasmuch as it appears from the statement of Mr. Justice Fancett that the titles of a great many persons may be affected by it. The learned Judges of the Supreme Court gave a very careful consideration to the case, and their Lordships have heard very able and elaborate arguments on both sides with regard to the construction to be put upon the Alienation Act of 1861. The question relates to a portion of the waste lands of the Crown in New South Wales, which on the 30th of May, 1875, were conditionally purchased by Henry Woods under the 13th section of the Act, and were subsequently, on the 10th of October, 1878, declared to be forfeited. Mr. Devlin had on the 8th of August, 1878, previously to the declaration of forfeiture, made an application for a conditional purchase of the lands. On the 13th of March, 1879, some considerable period after notice in the *Gazette* that the land had been forfeited, the plaintiff, who is the appellant, selected the land and applied to purchase it conditionally. The land agent refused to allow him to do so, upon the ground that Mr. Devlin had already made an application for the purchase of it. Upon the question being referred by the plaintiff to the Minister for Lands, he, by letter of the 5th of

April, 1879, directed the land agent to accept the plaintiff's application as if made on the day on which it was originally tendered. This was accordingly done, and the deposit paid on the 15th of April, 1879. Mr. Devlin remained in possession. The plaintiff brought an action of trespass against him, and the question then arose whether lands taken under a conditional sale, and afterwards forfeited to the Crown, were open to a conditional purchase under section 13 of the Act, or whether by virtue of the 18th section they must not be sold, if at all, by public auction. That is the real question in the case. The plaintiff had to make out his title; and if he failed, it was unnecessary to decide whether Mr. Devlin obtained a title by the conditional purchase on the 8th of August, 1878.

It had been decided as far back as 1879, in the case of *Drinkwater v. Arthur* (1), that under such circumstances the lands were not open to conditional sale under the 13th section. But, considering the importance of the case, the learned Judges thought it right to confer together, and to reconsider the decision in *Drinkwater v. Arthur* (1). Having done so, they unanimously came to the conclusion that that decision was correct, and that the lands were not open to a conditional sale.

Their Lordships have come to the conclusion that the decision of the Supreme Court was a correct one. The 13th section of the Act appears to make it compulsory upon the Government to sell conditionally, upon an application being made, any lands which do not fall within the exceptions mentioned in the earlier part of that section. The Act provides "that any person may, upon any land office day, tender to the land agent for the district a written application for the conditional purchase of any such lands, not less than forty acres nor more than 320 acres, at the price of 20s. per acre, and may pay to such land agent a deposit of twenty-five per centum of the purchase-money thereof. And if no other like application and deposit for the same land be tendered at the same time, such person shall be declared the conditional pur-

(3) 47 Law J. Rep. P.C. 8; Law Rep. 3 App. Cas. 115.

(4) 44 Law J. Rep. P.C. 65; Law Rep. 6 P.C. 354.

(5) Sir Barnes Peacock; Sir Montague E. Smith; Sir Richard Couch; and Sir John Mellor.

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chaser thereof at the price aforesaid." Then there is a provision with regard to several applications being made at the same time. In this case no question arises under that.

The conditions upon which the land is sold are not specified in section 13, but by section 18 it is enacted: "At the expiration of three years from the date of conditional purchase of any such land as aforesaid, or within three months thereafter, the balance of the purchase-money shall be tendered at the office of the colonial treasurer, together with a declaration by the conditional purchaser or his alienee, or some other person in the opinion of the minister competent in that behalf under the ninth Victoria, number nine, to the effect that improvements, as hereinbefore defined, have been made upon such land, specifying the nature, extent and value of such improvements, and that such land has been from the date of occupation the *bona fide* residence, either continuously of the original purchaser, or of some alienee or successive alienees of his whole estate and interest therein, and that no such alienation has been made by any holder thereof until after the *bona fide* residence thereon of such holder for one whole year at the least." Upon his making that declaration, and upon payment of the balance of the purchase-money, he is entitled to have a conveyance in fee-simple; but there is a clause at the end of section 18 that, "on default of a compliance with the requirements of this section"—that is, in default of his having made the necessary improvements, and having resided according to the terms of the section—"the land shall revert to Her Majesty, and be liable to be sold at auction, and the deposit shall be forfeited."

It was contended, on behalf of the plaintiff, that the declaration that the land shall revert to Her Majesty authorises the Crown to sell the lands so forfeited either by conditional sale or by auction, at the option of the Crown. But the section does not stop at the words "shall revert to Her Majesty." It proceeds to say that the land shall be liable to be sold at auction, and the deposit shall be forfeited. It was argued that

the words "and be liable to be sold at auction" are not compulsory upon the Crown, but that it gives it an option; and section 20 of the Act was referred to. That relates to lands which are abandoned, and says that they shall "be declared forfeited by notice in the Government Gazette, and may then be sold at auction." Then a statute for the general interpretation of Acts was referred to for the purpose of shewing that the word "may" gives an option; and it was said that as section 20 says they may be sold, and gives an option to the Government; so the words "liable to be sold at auction" must be interpreted in the same way as "may then be sold at auction," and also gives an option to the Government.

It is true that both the expressions "liable to be sold at auction" and "may be sold at auction" give an option to the Government; but the question is, What is the option? Is it an option to sell by auction or to sell by conditional sale; or an option to sell by auction or not to sell at all? That is the mode in which Sir William Manning very properly puts the case. He says, in delivering his judgment, "I agree, indeed, that the words plainly import that the Crown has an option. But to do what? Surely to sell by auction or to withhold from such sale as the Crown may think fit. The alternative of sale by way of free selection in no way enters into the question, no trace of it being found in either the 18th or 20th clause; and, indeed, it is not too much to say that if that alternative were admitted, the option would not be with the Crown, but with the selectors; for when once the land is open to selection, a statutory right accrues to anyone to select the land." Their Lordships are of opinion that the view taken by Sir William Manning is the correct one, and that the option given to Government was to sell by auction or to retain it in their own hands.

A general rule of construction of Acts of Parliament is *expressio unius est exclusio alterius*.

Two modes of sale are referred to by the Act—one a conditional sale, the other a sale by auction; and according to the

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maxim above referred to, the 18th section, by expressly authorising a sale by auction, excluded the right of conditional sale. That was the view taken by Mr. Justice Hargrave in the case of *Drinkwater v. Arthur* (1), to which the Court below referred. Mr. Justice Faucett, in his judgment in this case, quotes the following passage from Mr. Justice Hargrave's judgment in *Drinkwater v. Arthur* (1): "If there be any one rule of law clearer than another as to the construction of all statutes and all written instruments (as, for example, sales under powers in deeds and wills), it is this, that where the Legislature or the parties to any instrument have expressly authorised one or more particular modes of sale or other dealing with property, such expressions always exclude any other mode, except as specifically authorised." That appears to their Lordships to be a correct exposition of the law, and it is substantially carrying out a principle similar to that expressed in the maxim *expressio unius est exclusio alterius*.

The construction that the option given to the Government was to sell by auction or not to sell at all, is a very reasonable one. If under the words "shall revert to Her Majesty" the forfeited lands should be held to have become subject to all the provisions of the Act to the same extent as they were previously to the conditional sale, then, as soon as the defaulter made default and the Government elected to treat the default as a forfeiture, any person might claim to purchase the land conditionally at the rate of 20s. an acre, whatever might be the value of the improvements. But if the Government are bound to sell by public auction or not to sell at all, then at least a month's notice must be given of the intended sale; so that everyone may have an opportunity of purchasing, and the Government may get the real value of the land by competition. There would be no objection to the original defaulter's coming in and purchasing by auction with the competition of other persons, each bidding for the land according to his view of the value of it.

Again, if after forfeiture all the provisions of the Act apply to the forfeited

land, the Government would be bound to sell it to the first applicant, and the defaulter would have a right to come in and purchase the land again conditionally on the original terms.

It should be observed that the Legislature could not have said that the Government must sell by auction without depriving the Government of the option of retaining the lands.

Their Lordships are of opinion that the Supreme Court came to a correct conclusion in holding that the Government were not bound to sell a forfeited selection, but that if they elected to sell they could only sell by auction. Their Lordships, therefore, will humbly recommend Her Majesty to affirm the decision of the Supreme Court. The appellants must pay the costs of this appeal.

Solicitors—Burton, Yeates, Hart & Burton, for the appellants; Parker & Co., for the respondent.

1881. } CHARLES PALMER (*appellant*) v.
July 15. } MARK HUTCHINSON (*respondent*).

Natal—Supreme Court—Jurisdiction—Deputy Commissary General—Contract by—Liability to be Sued.

A Deputy Commissary General cannot be sued either personally or in his official capacity upon a contract entered into by him on behalf of the Commissariat Department.

This was an appeal from a judgment of the Supreme Court of the Colony of Natal, overruling the appellant's exceptions to the institution of an action in that Court by the respondent against the appellant in his capacity of Deputy Commissary General.

The declaration stated—That the respondent was a resident in the colony of Natal, and that the appellant was the chief officer of the commissariat branch of Her Majesty's army then in Natal, and that in such capacity he made a contract

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with the respondent for the conveyance of military or Government stores from Pietermaritzburg to Doornberg or Dundee by the respondent's waggons and that the respondent's waggons and oxen were compelled by a military officer to make a forced march to Howick, in consequence of which some oxen were disabled or died. That by the order of Major-General Marshall the respondent with his waggons kept pace with a wing of the 17th Lancers, and was promised by that officer compensation for the loss of his cattle and extra strain upon them, and in consequence of this and a night alarm some cattle were killed or lost. The relief claimed was as follows: 743*l.* 18*s.* 10½*d.* for the price or hire of the waggons and oxen, and for carriage of goods; and 1,000*l.* as damages, being the value of fifty oxen killed or dead owing to the overdriving; 456*l.* as hire for the said waggons and oxen, or as damages for their illegal seizure or detention; and 250*l.* as general damages.

The appellant excepted to the jurisdiction of the Supreme Court of the Colony of Natal, on the ground that the action as instituted was not cognisable by the Supreme Court of this colony, as being an action against Her Majesty's Commissariat Department for acts alleged to be done by officers in Her Majesty's service in performance of their duties in that service, and that the acts complained of were acts over which the Supreme Court of the Colony of Natal had no jurisdiction, and for which the Supreme Court of the Colony of Natal could afford no remedy as claimed. And, by way of exception to the declaration, the appellant alleged that in the capacity in which he was sued, he was an officer of Her Majesty's service acting under the instructions and directions of the Commander of the Forces in South Africa, and, through him, was subject to the instructions and directions of the Secretary of State for War, and that the negligence and acts complained of and the claims made under the alleged contract were acts and claims for which no legal remedy exists against Her Majesty's Commissariat Department.

The exceptions were argued before the Chief Justice of the Supreme Court and the second Paine Judge, who, after

taking time to deliberate, overruled the exceptions to the jurisdiction of the Court, and also the exception to the declaration and action, save and except that the exceptions relating to damages claimed for alleged tortious acts of officers of Her Majesty's services, were allowed.

The appeal was from the judgment, so far as it was adverse to the appellant.

The Attorney-General (Sir H. James), Mr. A. L. Smith and Mr. Danckwerts, for the appellant.—The Supreme Court had no jurisdiction to entertain the action. The Court has no jurisdiction without the Sovereign's permission to entertain a suit against the Crown. The Supreme Court has no jurisdiction to entertain an action, to charge the Crown or its revenues or property, whether such property be within its jurisdiction or not; such jurisdiction cannot be obtained by suing a public officer of the Crown. They referred to *Gidley v. Lord Palmerston* (1), *Sands v. Cooper* (2), *Cushing v. Dupuy* (3), *Feather v. The Queen* (4).

The respondent did not appear.

SIR BARNES PEACOCK delivered the judgment of their Lordships (5).—This is an appeal from a judgment of the Supreme Court of Natal, in a suit in which the appellant was the defendant. The suit was brought against him in his capacity, as described in the writ, as Her Majesty's Deputy Commissary General for the colony of Natal, and, as such, representing Her Majesty's Commissariat Department. In the declaration he is described as Deputy Commissary General in his capacity as Acting Commissary General.

The suit was brought, as alleged in the writ, to recover,—

First, the sum of seven hundred and forty-three pounds eighteen shillings and tenpence halfpenny sterling, for the price or hire of certain waggons and oxen, and for carriage of certain goods.

(1) 2 B. & B. 275.

(2) 3 Menzies, 566.

(3) 5 App. Cas. 409; 49 Law J. Rep. P.C. 631.

(4) 6 B. & S. 257; 35 Law J. Rep. Q.B. 200.

(5) Sir Barnes Peacock; Sir Montague Smith; Sir Robert P. Collier; Sir Richard Couch; and Sir Arthur Hobhouse.

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Secondly, the sum of one thousand pounds sterling, as and for damages, and as being the value of fifty trek oxen killed or dead owing to the overdriving and illegal acts of the defendant or his *employés*.

Thirdly, the sum of four hundred and fifty-six pounds sterling, as hire for certain six waggons and oxen, or as damages for their illegal seizure and impressment by the defendant or his *employés*; and,

Fourthly, the sum of two hundred and fifty pounds sterling as general damages.

All upon grounds to be fully set forth in the declaration.

The grounds of the claim were more fully stated in the declaration, in which it was alleged that the first item of 743*l.* 18*s.* 10*d.* was due for the hire of certain waggons under a tender made by the plaintiff, and accepted by the defendant in his capacity as Acting Commissary General, for seven waggons for the purpose of conveying Government stores, goods, packages of military stores and other supplies from Pietermaritzburg to Dundee or Doornberg, and for the conveyance of certain extra or surplus goods, servants and invalids, as passengers in the said waggons. The other items were claimed as damages alleged to have been sustained by the plaintiff in consequence of certain illegal and tortious acts committed by the defendant and his *employés*, and for compensation alleged to be due under a promise made by Major-General Marshall, commanding the cavalry brigade, and the senior officer in the vicinity. The plaintiff admitted by his declaration that the defendant had tendered the sum of 1,053*l.* 18*s.* 10*d.*, in lieu of all claims, the sum of 743*l.* 18*s.* 10*d.* being for the freight, and 310*l.* for the rest of the plaintiff's claim.

The defendant, without answering the plaintiff's declaration or entering into the merits of the case, excepted to the jurisdiction of the Court on the ground that the action was not cognisable by the Court, as being an action against Her Majesty's Commissariat Department for acts alleged to be done by officers in Her Majesty's service in performance of their duties in that service, and also upon the ground that the acts complained of were

acts for which the Court could afford no remedy; and he also excepted to the declaration on the grounds that the defendant, in the capacity in which he was sued, was an officer in Her Majesty's service acting under the instructions and directions of the Commander of the Forces in South Africa, and, through him, subject to the instructions and directions of the Secretary of State for War, and that the negligence and acts complained of and the claims made under the alleged contract were acts and claims for which no legal remedy existed against Her Majesty's Commissariat Department, even if proceedings had been adopted in England by way of petition of right in due legal form instituted in the Supreme Court of Judicature in England, until the Secretary of State for War, as representing the said department of Her Majesty's Government, had had an opportunity of enquiring into and determining the merits of said claims and alleged wrongs complained of, and the relief (if any) which should be afforded, and of submitting the petition and his recommendations thereon to Her Majesty the Queen for Her Majesty's gracious consideration, and in order that Her Majesty, if she should think fit, might grant her fiat that right be done.

The defendant also excepted to so much of the declaration as claimed damages for negligence, detention or otherwise, on the ground that such claims were bad in law and substance; on the following grounds, namely:—

"First. That they are preferred against a department of Her Majesty's Imperial service for alleged tortious acts of officers acting in the discharge of their duty, and when employed in the service of that department;

"Secondly. That even if a claim for damages as instituted in the action were preferred in England on a petition of right, and submitted for the decision of the Supreme Court of Judicature in England, such claim would be disallowed."

The Court overruled the exceptions to the jurisdiction of the Court, and also those to the declaration, so far as it related to the form of suing and to the claims in respect of contract, whether

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made by the Commissariat Department or arising impliedly by reason of Major-General Marshall's orders or request; but they allowed the exceptions to the declaration so far as related to the damages in respect of *delicta* or tortious acts of any of the officers of the Queen's Government.

In delivering his judgment, the learned Chief Justice said, "Her Majesty is not sued by name or title in this action, nor is she so sued in substance, any more than if the action were against the colonial revenue. A public officer under Her Majesty (as public officers generally are) is sued in his official capacity on a contract in that capacity; and it appears to me that by the law or practice of this forum, he may be so sued in ordinary course. It may be quite another matter whether he is liable on an implied contract, by reason of Major-General Marshall's order or request; but possibly evidence may show that he is. As far, therefore, as by the exceptions it is objected that there is no jurisdiction in this Court to entertain the action, or that the declaration avers no regularly instituted cause of action, they must, I think, be overruled.

"But just as I am of opinion that the practice of our Court is to be applied to maintain this action, as far as relates to the form of suing, and to the suits being in respect of contract, so I also think, in accordance with the previous decisions by this Court (*Muirhead & Co. v. Ayliff*, 23rd November, 1875, acted on in an Estcourt bridge case in 1879), that the revenue (be it Natal or English) is not liable for the alleged *delicta*, or, in English law phrase, the tortious acts of officers of the Queen's Government; I can draw no distinction between one Queen's Government and another in that respect (*Rogers v. Rajendro Dutt* (6))."

It is unnecessary to determine whether the Court would have had jurisdiction if a petition of right had been presented, and the Crown had ordered that right should be done. The suit was not a petition of right, and there was no order of Her Majesty that right should be done.

If the action had been against the Crown, either by name or title, or in substance, it is clear that the Court would have had no jurisdiction to entertain it.

The jurisdiction conferred upon the Court by the Ordinance of Natal, dated July 10, 1857, was merely "over all Her Majesty's subjects, and all other persons whomsoever residing and being within the colony."

The action is against a subject in his official character as Deputy Commissary General. And it is further stated in the declaration that "the defendant in his aforesaid capacity is the representative or head of the Commissariat Department in the colony, and, as such, represents Her Majesty's Imperial Government in the colony, so far as the Commissariat and Transport Departments of the Imperial Government are concerned."

It is clear that the exceptions to the declaration ought to have been allowed upon the ground that the facts stated did not constitute a cause of action against the defendant. It has never been contended by anyone that the defendant was personally liable upon the contract. If it had been, that contention must have failed.

The Supreme Court held that he was liable in his official character. It treated the action as a proceeding against the imperial revenue by making a public officer a defendant in his official capacity, and expressed an opinion that a decree in such a suit might be executed against some portion, at least, of the revenue or property of the Imperial Government.

The Chief Justice said, "It is a common practice with us in South African Courts, that actions for obtaining from the revenue money for or in respect of contracts, are instituted against the proper public officer (generally the Colonial Secretary) in his official capacity, and judgment against him in that capacity is both sought and, at times, given. And in principle it seems to me that it has to be the same, as to our mode of procedure, whether the revenue sought by the action to be charged be colonial or English. The colonies are as much part of the Queen's dominions as England is, and for

(6) 13 Moore P.C. 209.

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us to hold, as is contended for on the part of the defendant, that to sue here the English revenue is to sue the Sovereign, but to sue the colonial revenue is not, would be, I apprehend, to introduce a distinction practically and theoretically constitutionally unsound. I may mention here that our practice of proceeding against the revenue by making a public officer a defendant in his official capacity was, *quoad* the Cape Colony, recognised apparently by the Privy Council, as far back as the year 1838, in the case of *Van Rooyen v. Reit* (7), where the Civil Commissioner of Uitenhage (in the Cape Colony) was sued by private individuals, in respect of a pecuniary default of his predecessor in office, in respect of moneys received by him from them. . . ."

In a subsequent part of his judgment, he said, "There is no occasion here to discuss the question as to how any judgment in this action can be put in execution, but I am disposed to think that the general rule is that a judgment obtained against a Government officer in his official capacity may, by our practice, be executed against any Government property found within this Court's jurisdiction, and not allocated by law to some distinct special purpose. We held, I think, several years ago, that certain property of the Durban municipality could not be taken into execution, by reason of its being thus otherwise allocated. There might, too, I presume, be cases in which the public officer sued did not sufficiently represent *in toto* the Government for a judgment against him to bind all Government property, even though not specially allocated."

The case of *Van Rooyen v. Reit* (7), cited by the Chief Justice, is no authority in support of the plaintiff's right to sue the Deputy Commissary General. In that case it was held that the Government officer who was sued was not liable, and the only right to sue the District Secretary and Treasurer which was recognised by the Judicial Committee was a right to sue him personally for money, which by arrangement between him and Swan, of whom the plaintiffs were the legal repre-

sentatives, he had received on Swan's account.

In the case under appeal it was said by the Chief Justice, that the Crown is, "as to some branches of revenue, represented by public officers, and that then no petition of right seems to be requisite;" and he referred to the case of the Attorney-General's proceeding by information, and to the case of *Dyke v. Elliot* (8), in which the Crown sued in the Admiralty Court in the name of the Procurator-General, for the condemnation of a vessel for an offence against the Foreign Enlistment Act.

The Crown, by virtue of its prerogative, has a right to sue by information in the name of the Attorney-General, and also has a right to sue in the Admiralty Court in the name of the Procurator-General, but in the present case the Chief Justice treats the plaintiff as attempting to sue the Imperial revenue by making a public officer a defendant in his official capacity. But this right of the Crown affords no support for the proposition that the Government revenue may be reached by a suit against a public officer in his official capacity.

The case of *Kirk v. The Queen* (9), which is cited by the Chief Justice, is no authority for that proposition. That was a suit by the Attorney-General against a contractor with the Secretary of State for War, praying for an injunction to restrain him from continuing upon land vested in the Secretary of State after notice to quit given under the powers of contract. It seems to have been intimated that in such a suit the Secretary of State for War should be a party—that is, a party as complainant, not as a defendant.

Their Lordships are clearly of opinion that the Deputy Commissary-General cannot be sued, either personally or in his official capacity, upon a contract entered into by him on behalf of the Commissariat Department. He is not a Corporation, and he has no property or assets in his official capacity which could be seized or attached in execution of a

(7) 2 Moore P.C. 177.

(8) 8 Moore P.C. N.S. 428.

(9) Law Rep. 14 Eq. 558.

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decree against him in that capacity, and it is clear that no portion of the Government revenue, whether allocated to a special purpose or not, could be seized in execution under it.

The law upon the subject has been clearly laid down in several cases.

In the case of *Macheath v. Haldemund* (10), which was an action against the Governor of Quebec for military stores and supplies provided under his orders for the garrison of a fort, Lord Mansfield said, "The only question before the Court is, whether the defendant be liable or not in this action. If he be, the plaintiff must recover. If not, no consideration as to the plaintiff's remedy against any other person can induce the Court to make him so. * There is no colour to say that he is liable in his character of Commander-in-Chief. In a late case which was tried before me, where one Savage brought an action against Lord North, as First Lord of the Treasury, in order that he might be reimbursed the expenses which he had incurred in raising a regiment for the service of Government, I held that the action did not lie.

"So in another case of *Lutterloh v. Halsey*, which was an action brought against the defendant, who was a commissary, for the supply of forage for the army, and by whom the plaintiff had been employed in that service, the commissary was held not liable.

"In the present case it was notorious that the defendant did not personally contract. The plaintiff knew, at the time that he furnished the stores, that they were for the use of the Government; and he afterwards made Government debtor in his bills."

In the case of *Gidley v. Lord Palmerston* (1) it was held that an action would not lie against the Secretary at War for moneys which he, as a public officer, had received, and which he was authorised to pay over to the plaintiff's testator, on account of his retiring allowance.

In that case Chief Justice Dallas, in delivering the judgment of the Court,

said, "It is not pretended that the defendant is to be charged in respect of any express undertaking or agreement between him and the testator, or in respect of any other character than his public and official character of Secretary at War. It is in that character, and in that only, that his duty is alleged to arise, being therefore a duty as between him and the Crown only, and not resulting from any relation to or employment by the plaintiff, or any undertaking in any way to be personally responsible to him. The money received is granted by the Crown, subject only to the disposition or control of the defendant as the agent or officer of the Crown, and responsible to the Crown for the due execution of the trust or duty so committed. There is therefore no duty from which the law can imply a promise to pay the testator during his life, or to his executor after his death, nor can money be said to have been had and received to the use of the testator, which money belonged to the Crown, being received as the money of the Crown, and the party receiving it being responsible only to the Crown in his public character. On this view of the case it appears to us that this action cannot be maintained."

Any funds which may be issued by Government to the Commissariat Department for the service of the State stand upon the same footing as that above described with reference to the money received by the Secretary at War.

With reference to the remark of the Chief Justice that the case could be disposed of by having regard to the practice of the Court, the forum of the *locus contractus* and of the action—their Lordships think it right to say that no practice of the Court can confer upon it any power or jurisdiction beyond that which is given to it by the charter or law by which it is constituted.

For the above reasons their Lordships are of opinion that the exceptions to the whole declaration ought to have been allowed, and judgment given for the defendant, with costs; and they will humbly advise Her Majesty to allow the appeal, to reverse the judgment of the Supreme Court, and to order judgment

Palmer v. Hutchinson.

to be entered for the defendant, with costs. The respondent must pay the costs of this appeal.

Solicitors—Solicitor to the Treasury, for appellants.

1881. }
Jan. 25. } *In re ADAIR'S PATENT.*

Patent—Prolongation—Foreign Patent—Accounts.

In a petition for prolongation of a patent a patentee who has obtained foreign patents must state full particulars of such patents and also render an account of all his profits. An English patentee having taken out a foreign patent subsequent to the English patent and allowed it to expire is not precluded thereby from a prolongation of the English patent.

This was a petition for the prolongation of the term of letters patent for an invention for "improvements in pumps."

Mr. Kay and Mr. Healey, for the petitioner, referred to *Hill's Patent* (1), *Betts' Patent* (2) and *Poole's Patent* (3).

Mr. Aston and Mr. Lawson, for the opponents.

The Attorney-General (Sir H. James) and Mr. A. L. Smith, for the Crown.

SIR R. COLLIER delivered the judgment of their Lordships (4).—In this case their Lordships agree that the patent is a meritorious and useful one, and undoubtedly the patentee, his patent having been extensively infringed, and he having been put to very large costs in maintaining it, costs which, unfortunately, he has been unable to recover, comes before their Lordships with a case entitled to their favourable consideration.

(1) 1 Moore P.C. N.S. 258.

(2) Ibid. 49.

(3) 36 Law J. Rep. P.C. 76; Law Rep. 1 P.C. 518.

(4) Sir Barnes Peacock; Sir Montague Smith; and Sir R. F. Collier.

With respect to his remuneration their Lordships are by no means satisfied that he has been, considering all the circumstances, sufficiently remunerated, but before granting this application they must be satisfied that the petitioner has subscribed to those conditions which have again and again been laid down as precedent to his obtaining a renewal of his patent, which, as has been many times declared, is a matter of favour and not of right.

In the first place their Lordships have to observe that the petitioner, although stating in his petition that he had exhibited his invention in foreign countries and endeavoured to push it there, makes no mention whatever of his having obtained several foreign patents, two of which have been allowed to expire. The rule has been again and again laid down that where a patentee, whether English or foreign, has obtained foreign patents they should be stated to their Lordships.

Moreover, it may be material to ascertain the date of those patents, inasmuch as if the date was prior to that of the English patent, even in the case of an English invention and an English patentee, it would at all events be a serious question whether the patent should be renewed. But in more than one case it has been said that there may be cases in which the profits of a foreign invention may be properly taken into consideration. It is therefore necessary for an English as well as a foreign patentee to give their Lordships the fullest information upon that subject.

It has been indeed argued on the part of the Crown and of the opponents that the petitioner in this case having taken out a foreign patent, although after the date of the English patent, and allowed it to expire, is thereby disentitled to a renewal; but upon examination of the cases it does not appear that any of them go to the length of deciding that with respect to an English invention and an English inventor, the mere taking out of letters patent in a foreign country, and allowing them to expire, would be a reason for their refusal to renew the patent. In fact there are two cases—the case of *Betts* and the case of *Poole*—in which

In re Adair's Patent.

the contrary has been held ; their Lordships therefore do not give weight to that objection, but they have now come to the question of the accounts.

In *Betts' Patent* (2), which has been before referred to, the rule with respect to accounts was there stated by Lord Chelmsford : "There can be no difficulty in a patentee beginning from the first to keep a patent account distinct and separate from any other business in which he may happen to be engaged. He knows perfectly well that if his invention is of public utility, and he has not been adequately remunerated, he will have a claim for an extension of the original term of his patent. It is not therefore too much to expect that he should be prepared when the necessity arises to give the clearest evidence of everything which has been paid and received on account of the patent."

And the same doctrine is laid down by Lord Cairns in *Sazby's Patent*, which insists upon the necessity of the patentee giving their Lordships accounts, which, as he expresses it, should be so clear as not to admit of controversy.

Now their Lordships feel some anxiety whether or not they would be justified in passing these accounts—that is to say, in so far approving of them as to base an extension of the patent upon them ; and have with some reluctance come to the conclusion that these accounts are not satisfactory, and that they could not adopt them as satisfactory without in

some degree at all events relaxing the rule which has been laid down many times by their predecessors.

Under these circumstances their Lordships, though they are not prepared to say that the petitioner may not have been insufficiently remunerated, cannot enter into a speculation as to what his absolute remuneration was ; it may have been a good deal more than here appears. It is perhaps difficult to suppose it can have been less ; but whether it was or was not sufficient appears to them not to be the question, but whether he has complied with the condition of supplying their Lordships with a satisfactory account. Under these circumstances their Lordships have come to the conclusion that the account is not satisfactory. This conclusion is founded not only on the omission, which they regard as a serious one, to give them information upon the foreign patent, but also upon the ground that the accounts not being satisfactory they feel that it would not be consistent with their duty to advise Her Majesty to extend this patent.

Solicitors—Wynne & Son, for petitioner ; Field, Roscoe & Co., for opponents ; Solicitor to the Treasury, for the Crown.

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within the colony; and which notes, having come into the hands of such bank, shall during the month have been put into circulation by such bank:—*Held*, that the provisions of both sections apply only to banks of issue issuing within the colony notes payable by themselves. *The Oriental Bank Corporation v. Henry Wright*, 1

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PATENT—*prolongation: foreign patent: accounts*—In a petition for prolongation of a patent a patentee who has obtained foreign patents must state full particulars of such patents and also render an account of all his profits. An English patentee having taken out a foreign patent subsequent to the English patent and allowed it to expire is not precluded thereby from a prolongation of the English patent. *In re Adair's Patent*, 68.

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THE PUBLIC GENERAL ACTS

OF THE UNITED KINGDOM OF

GREAT BRITAIN AND IRELAND:

PASSED IN THE

FORTY-FOURTH AND FORTY-FIFTH YEARS

OF THE REIGN OF HER MAJESTY

QUEEN VICTORIA

At the Parliament begun and holden at Westminster, the 29th Day of April, *Anno Domini* 1880, in the Forty-third Year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: Being the SECOND SESSION of the TWENTY-SECOND PARLIAMENT of the United Kingdom of GREAT BRITAIN and IRELAND.

LONDON :

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44 & 45 VICTORIA, 1881.

СНАР. 1.

Consolidated Fund (No. 1) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of 2,500,000l. out of the Consolidated Fund for the service of the year ending 31st March 1881.*
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of Two million five hundred thousand pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one.

(17th February 1881.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one, the sum of two million five hundred thousand pounds.

2. The Commissioners of the Treasury may borrow from time to time on the credit of the said sum any sum or sums not exceeding in the whole the sum of two million five hundred thousand pounds, and shall repay the moneys so borrowed with interest not exceeding five pounds per centum per annum out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 1) Act, 1881.

CHAP. 2.

Burial and Registration Acts (Doubts Removal) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Explanation of 43 & 44 Vict. c. 41. s. 11.*
2. *Construction of 43 & 44 Vict. c. 41. s. 11.*
3. *Short title.*

An Act to remove Doubts as to the operation and effect of so much of the Burial Laws Amendment Act, 1880, as relates to the Births and Deaths Registration Act, 1874.

(17th February 1881.)

WHEREAS doubts have arisen as to the operation and effect of the eleventh section of the Burial Laws Amendment Act, 1880, by reason of a clerical error in the first sentence thereof; and it is expedient that such doubts should be removed:

Be it declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Nothing in the eleventh section of the Burial Laws Amendment Act, 1880, shall have, or be deemed in law to have had, the effect of repealing, or in any manner altering, any of the provisions contained in the seventeenth section of the Births and Deaths Registration Act, 1874, in any case whatever, save and except only the case of a burial under the Burial Laws Amendment Act, 1880.

2. The words "in the case of a burial under that Act" in the first sentence of section eleven of the Burial Laws Amendment Act, 1880, shall be construed and read as if they had been "in the case of a burial under this Act."

3. This Act may be cited as the Burial and Registration Acts (Doubts Removal) Act, 1881.

CHAP. 3.

Judicial Committee Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Lords Justices of Appeal to be members of Judicial Committee.*
2. *Short title.*

An Act to further improve the Administration of Justice in the Judicial Committee of the Privy Council.

(17th February 1881.)

WHEREAS it is expedient that further provision should be made for the administration of justice in the Judicial Committee of the Privy Council:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Tem-

poral, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Every person holding or who has held in England the office of a Lord Justice of Appeal shall, if a member of Her Majesty's Privy Council in England, be a member of the Judicial Committee of the Privy Council.

2. This Act may be cited as the Judicial Committee Act, 1881.

CHAP. 4.

Protection of Person and Property (Ireland).

ABSTRACT OF THE ENACTMENTS.

1. *Power of Lord Lieutenant to arrest and detain.*
2. *Grant of out-door relief.*
3. *Supplemental provisions as to warrants, &c.*
3. *Continuance of Act.*

An Act for the better Protection of
Person and Property in Ireland.
(2nd March 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1.) Any person who is declared by warrant of the Lord Lieutenant to be reasonably suspected of having at any time since the thirtieth day of September one thousand eight hundred and eighty been guilty as principal or accessory of high treason, treason-felony, or treasonable practices, wherever committed, or of any crime punishable by law committed at any time since the thirtieth day of September one thousand eight hundred and eighty in a prescribed district, being an act of violence or intimidation, or the inciting to an act of violence or intimidation, and tending to interfere with or disturb the maintenance of law and order, may be arrested in any part of Ireland and legally detained during the continuance of this Act in such prison in Ireland as may from time to time be directed by the Lord Lieutenant, without bail or mainprize; and shall not be discharged or tried by any court without the direction of the Lord Lieutenant; and every such warrant shall, for the purposes of this Act, be conclusive evidence of all matters therein contained, and of the jurisdiction to issue and execute such warrant, and of the legality of the arrest and detention of the person mentioned in such warrant.

(2.) Every warrant whereby any person is declared to be reasonably suspected of any crime other than high treason, treason felony, or treasonable practices, shall state the character of such crime. A copy of the warrant of arrest shall be given to each person arrested under this Act on the occasion of his arrest.

(3.) Any person detained in pursuance of a warrant under this Act shall be treated as a person accused of crime and not as a convicted

prisoner, subject to the special rules for the time being in force with respect to prisoners awaiting trial: Provided that the Lord Lieutenant may from time to time, if he shall think fit, make regulations modifying such special rules so far as they relate to persons detained under this Act. Any regulations made by the Lord Lieutenant under this provision shall be laid before both Houses of Parliament within fourteen days after the making of the same, if Parliament be then sitting, and if not, then within fourteen days after the next meeting of Parliament, and when Parliament is not sitting such regulations shall within fourteen days be published in the Dublin Gazette.

(4.) A list of all persons for the time being detained in prison under this Act, with a statement opposite each person's name of the prison in which he is detained for the time being, and of the ground stated for his arrest in the warrant under which he is detained, shall be laid before each House of Parliament within the first seven days of every month during which Parliament is sitting, and when Parliament is not sitting such list shall be published in the Dublin Gazette within the first seven days of every month.

(5.) On the expiration of a period of three months after the arrest of each person detained under this Act, and so from time to time on the expiration of each succeeding period of three months while such person is detained, the Lord Lieutenant shall consider the case of such person and decide thereon; and the decision of the Lord Lieutenant in that behalf shall be certified under his hand, or the hand of the Chief Secretary to the Lord Lieutenant, to each Clerk of the Crown, by whom a copy of the warrant under which such person shall be detained shall be filed in his public office, under this Act, and each such Clerk of the Crown shall record such decision by indorsement on the copy of the warrant so filed in his office.

(6.) No person discharged from detention under this Act shall be so discharged at a greater distance than five miles from the place whereat he was first arrested under this Act,

unless he shall himself prefer to be discharged at a place nearer to the prison wherein he was last detained.

(7.) "Prescribed district" means any part of Ireland in that behalf specified by an order of the Lord Lieutenant for the time being in force, and the Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may from time to time make, and when made, revoke and alter any such order.

2. The enactments contained in the third section of the Relief of Distress (Ireland) Act, 1880, as amended by the ninth section of the Relief of Distress (Ireland) Amendment Act, 1880, shall, so far as relates to the families of persons for the time being detained under this Act, continue in force during the continuance of this Act.

3. (1.) Any warrant or order of the Lord Lieutenant under this Act may be signified under his hand or the hand of the Chief Secretary to the Lord Lieutenant, and a copy of every warrant under this Act shall, within seven days after the execution thereof, be transmitted to the clerk of the Crown for the county in which was the last known place of abode of the person arrested under such warrant, and be filed by the said clerk of the Crown in his public office in said county; and a further copy of every such warrant shall, within seven days after the execution thereof, be transmitted to the clerk of the Crown for the county of the city of Dublin, and be filed by him in his public office in that city; and each such clerk of the Crown shall

furnish a copy of such warrant free of charge, certified under his hand to be a true copy, on demand, to any relative of the person arrested under such warrant or his solicitor.

(2.) The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may from time to time make, and when made revoke and alter, an order prescribing the forms of warrants for the purposes of this Act, and any forms so prescribed shall when used be valid in law.

(3.) If any member of either House of Parliament be arrested under this Act the fact shall be immediately communicated to the House of which he is a member, if Parliament be sitting at the time, or if Parliament be not sitting, then immediately after Parliament reassembles, in like manner as if he were arrested on a criminal charge.

(4.) Every order under this Act shall be published in the Dublin Gazette, and the production of a printed copy of the Dublin Gazette purporting to be printed and published by the Queen's authority, containing the publication of any order under this Act, shall be conclusive evidence of the contents of such order, and of the date thereof, and of the same having been duly made.

(5.) The expression "Lord Lieutenant" means the Lord Lieutenant of Ireland or other Chief Governor or Governors of Ireland for the time being.

3. This Act shall continue in force until the thirtieth day of September one thousand eight hundred and eighty-two, and no longer.

CHAP. 5.

Peace Preservation (Ireland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Prohibition on having or carrying arms in proclaimed district, and search.*
2. *Power as to proclamation in respect to arms and ammunition.*
3. *Power as to prohibiting or regulating sale or importation of arms and ammunition.*
4. *Supplemental provisions.*
5. *Penalties.*
6. *Definitions.*
7. *Short title.*
8. *Continuance of Act.*

An Act to amend the Law relating to the carrying and Possession of Arms, and for the Preservation of the public Peace in Ireland. (21st March 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent

of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In a proclaimed district a person shall not carry or have any arms or ammunition save as authorised by the conditions set forth in the proclamation herein-after mentioned.

Any person carrying or having, or reasonably suspected of carrying or having, any arms or ammunition in contravention of this Act may be arrested without warrant by any constable or peace officer, and, as soon as reasonably can be, conveyed before some justice of the peace in order to his being dealt with according to law.

The Lord Lieutenant may by warrant direct any person named in such warrant to search in houses, buildings, and places situate in a proclaimed district and specified in the warrant, for any arms or ammunition suspected to be therein in contravention of this Act.

The person named in such warrant, with such constables and other persons as he calls to his assistance, may, within ten days next after the date of the warrant, at any time between sunrise and sunset, enter into any house, building, or place specified in such warrant and there execute the warrant; and in case admittance shall be refused to the persons aforesaid, or shall not be obtained by them within a reasonable time after it shall have been first demanded, they may enter by force in order to execute such warrant. The person named in such warrant shall, before executing the same, if so desired, produce the said warrant. Any arms or ammunition carried, had, or found under circumstances which contravene this Act shall be forfeited to Her Majesty.

Any arms or ammunition in the possession of persons not entitled to have the same which shall, within a period to be fixed by the proclamation herein-after mentioned, be given up voluntarily or taken under such circumstances as shall prove to the satisfaction of the Lord Lieutenant that they have not been wilfully kept back, shall be deemed to be in the possession of Her Majesty, and provision shall be made in such proclamation for the deposit, registration, valuation, and care of the same; and such arms and ammunition shall be returned to the owners thereof whenever the proclamation relating thereto shall cease to be in force: Provided that at any time the Lord Lieutenant may, instead of keeping and returning the arms and ammunition aforesaid, if he think fit, pay to the owners of the same the value thereof as ascertained in the manner provided by the proclamation, or the owners thereof may demand payment of such value, and such payments may be made out of moneys to be provided by Parliament.

2. The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may from time to time by proclamation declare this Act to be in force within any specified

part of Ireland, and this Act shall thereupon after the date specified in the proclamation be in force within such specified part, and any such specified part of Ireland is in this Act referred to as a "proclaimed district;" and any such proclamation may set forth the conditions and regulations under which the carrying or having of arms or ammunition is authorised, and make provision for the appointment of persons to give effect to the same and the manner of the promulgation thereof.

3. The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may from time to time make orders for prohibiting or regulating in Ireland the sale or importation of arms and ammunition, and for the appointment of persons for the purpose of giving effect to such orders and providing for the manner of the promulgation thereof.

If any person sell or import, or attempt to sell or import, any arms or ammunition in contravention of any such order, such arms and ammunition shall be liable to be forfeited to Her Majesty, and the person so acting wilfully shall be guilty of an offence against this Act.

4. (1.) The Lord Lieutenant, by and with the advice of the Privy Council, may, by a further proclamation or order, from time to time alter or revoke any proclamation or order made by him under this Act. A copy of every proclamation and order under this Act shall be laid before each House of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and if not, then within fourteen days after the next meeting of Parliament.

(2.) The Lord Lieutenant may from time to time by order prescribe forms for the purposes of this Act, and any form so prescribed shall be valid in law.

(3.) Any warrant or order of the Lord Lieutenant under this Act may be signified under his hand or under the hand of the Chief Secretary to the Lord Lieutenant.

(4.) Any person who may be appointed under any proclamation issued pursuant to this Act to grant licenses to have or carry arms, in any district, shall be bound to grant to any occupier of one or more agricultural holdings a license to have arms, or to have and carry arms upon any specified lands, or a license to have and carry arms generally, who shall produce to him a certificate signed by two justices of the peace for the county, residing within the same petty sessions district as the person producing such certificate, that he is, to their own personal knowledge, a fit and

proper person to have such license respectively.

(5.) Every proclamation and order under this Act, and a notice of the promulgation thereof in the manner provided, shall be published in the Dublin Gazette, and the production of a printed copy of the Dublin Gazette purporting to be printed and published by the Queen's authority, and containing the publication of any proclamation, order, or notice under this Act, shall be conclusive evidence of the contents of such proclamation, order, or notice, and of the date thereof, and that the district specified in such proclamation is a proclaimed district within the meaning of this Act, and that the said proclamation or order has been duly promulgated.

5. Any person acting in contravention of this Act shall be liable if convicted before a court of summary jurisdiction to be imprisoned for a term not exceeding three months, or, at the discretion of the court, to a penalty not exceeding twenty pounds; but, if, upon the hearing of the charge, the court shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, it shall have power to dismiss the person charged without proceeding to a conviction. For the purposes of this Act, the

court of summary jurisdiction shall, in the police district of Dublin metropolis, be constituted of a divisional justice acting for the said district, and elsewhere in Ireland shall be constituted of two or more justices of the peace sitting in petty sessions, of whom one shall be a resident magistrate, or of one resident magistrate sitting alone in petty sessions.

6. In this Act the expression "Lord Lieutenant" means the Lord Lieutenant of Ireland or other Chief Governor or Governors of Ireland for the time being.

The expression "arms," includes any cannon, gun, revolver, pistol, and any description of firearms, also any sword, cutlass, pike, and bayonet, also any part of any arms as so defined.

The expression "ammunition" includes bullets, gunpowder, nitro-glycerine, dynamite, gun-cotton, and every other explosive substance whether fitted for use with any arms or otherwise.

7. This Act may be cited as the Peace Preservation (Ireland) Act, 1881.

8. This Act shall continue in force until the first day of June one thousand eight hundred and eighty-six.

CHAP. 6.

Local Taxation Returns (Scotland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title, and application.*
2. *Clerks of local bodies to make annual returns of local taxation.*
3. *Penalty.*
4. *Returns not to be additional to those already required.*
5. *Saving for railway companies, &c.*

An Act to provide for an Annual Return of Rates, Taxes, Tolls, and Dues levied for local purposes in Scotland. (29th March 1881.)

WHEREAS rates, taxes, tolls, and dues to a large amount are levied for purposes of local government and improvements in Scotland, and it is proper that Parliament should be informed annually of all sums so levied, and the expenditure thereof:

And whereas by the authority of Parliament returns of such receipts and expenditure are

prepared annually for England and Ireland, but no provision has been made for the preparation of returns applicable to Scotland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Local Taxation Returns (Scotland) Act, 1881, and shall apply to Scotland only.

2. The clerk (or if there be no clerk the treasurer or other officer or person keeping the accounts of the receipts and expenditure) of any corporation, commission, board, trustees, or other body or persons authorised to levy or to order to be levied any compulsory rates, taxes, tolls, or dues in Scotland (other than such as are levied for the public revenue of the United Kingdom), shall once a year make a return of their receipts and expenditure of such rates, taxes, tolls, or dues to Her Majesty's Principal Secretary of State for the Home Department at such time and in such form as he may from time to time direct, and unless some other time be prescribed such returns shall be made in the month of July in each year for the annual period ending at Whitsunday immediately preceding, where the accounts are made up from Whitsunday to Whitsunday, if otherwise, then for the latest period of twelve months preceding the date of the return for which the accounts are in use to be made up. The first returns shall be made in July of the present year. The Secretary of State shall cause such returns to be abstracted, and the abstract thereof, with

such further particulars as he may think proper, to be laid before Parliament.

3. Any clerk, treasurer, or other officer required as aforesaid to make a return under this Act who fails to make such return at the prescribed time, shall be liable to a penalty of twenty pounds, which may be recovered summarily by proceedings in the Sheriff Court or Court of Session at the instance of the Lord Advocate.

4. Where any annual return is now by law required to be made to the Secretary of State or to any public department, this Act shall not render necessary any other return. Provided that the Secretary of State may by his order published in the *Edinburgh Gazette* direct that all or any of such returns now required as aforesaid shall in future be made under this Act.

5. This Act shall not extend to any tolls or dues taken by any railway, canal, or joint stock company as profits of their undertaking, or to any tolls or dues taken by prescription, or otherwise, as private property.

CHAP. 7.

India Office (Sale of Superfluous Land) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Transfer of site in Charles Street from Indian Secretary to Commissioners of Works.*
3. *Land to continue subject to land tax.*
4. *Exemption from operation of 18 & 19 Vict. c. 122.*
5. *Disposition of moneys received for purchase.*

SCHEDULE.

An Act to authorise the Secretary of State for India in Council to sell a piece of land in Charles Street, Westminster, to the Commissioners of Her Majesty's Works and Public Buildings for the Public Service.

(29th March 1881.)

WHEREAS in pursuance of the India Office Site and Approaches Act, 1865, the Secretary of State in Council of India purchased certain land, and such land is now vested in Her Majesty, her heirs and successors, for the service of the Government of India, according to the provisions of the Act of the session of the twenty-first and twenty-second years of the

reign of Her present Majesty, chapter one hundred and six, intituled "An Act for the better Government of India," in this Act referred to as the India Act, 1858:

And whereas that portion of the land so purchased and vested in Her Majesty as aforesaid which is described in the schedule to this Act, and delineated on the plan deposited as in the schedule mentioned, is not required for the service of the Government of India:

And whereas the Secretary of State in Council of India has agreed to sell to the Commissioners of Her Majesty's Works and Public Buildings (in this Act referred to as the Commissioners of Works), and the Commissioners of Works have agreed to buy the said portion of land described in the schedule to this Act

for the sum of sixty-eight thousand six hundred pounds, to be paid out of moneys provided by Parliament:

And whereas it is expedient to provide as herein-after appearing for carrying into effect the said sale:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the India Office (Sale of Superfluous Land) Act, 1881.

2. As soon as the Commissioners of Works have paid into the Bank of England to the account of the Secretary of State in Council of India the sum of sixty-eight thousand six hundred pounds, the piece of land described in the schedule to this Act, and delineated on the plan deposited as in that schedule mentioned, shall be vested in the Commissioners of Works, and their successors and assigns, for all the estate and interest of Her Majesty therein, and all powers in relation to the said piece of land which, by the India Office Site and Approaches Act, 1865, are vested in Her Majesty, her heirs and successors, shall vest in the Commissioners of Works, their successors and assigns.

The Commissioners of Works shall hold the said piece of land for the public service in like manner as if it had been duly purchased by them under the Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight, intituled "An Act to amend an Act of the fourteenth and fifteenth years of Her present Majesty for the direction of Public Works and Buildings, and to vest the buildings appropriated for the accommodation of the Supreme Court of Justice in Edinburgh in the Commissioners

" of Her Majesty's Works and Public Buildings."

Provided that in the event of the sale, exchange, or lease of the said piece of land, or any part thereof, it shall not be necessary for the person who purchases or takes the same in exchange or lease to ascertain that the direction of the Commissioners of Her Majesty's Treasury has been given to such purchase, exchange, or lease.

The receipt of one of Her Majesty's Principal Secretaries of State for the above-mentioned sum shall be recorded at the Queen's Remembrancer's Office among the Records of the High Court of Justice, and shall be conclusive evidence to any purchaser that the above sum was duly paid, and that the land became under this Act vested in the Commissioners of Works.

3. Such portion of the piece of land described in the schedule to this Act as, at the time of the passing of this Act, is subject to land tax, shall continue liable thereto until duly discharged, but shall not be assessed to the land tax at a higher value than that at which such land was assessed at the time at which it was purchased in pursuance of the India Office Site and Approaches Act, 1865.

4. All buildings erected on the land mentioned in the schedule to this Act by or under the direction of the Commissioners of Works shall be exempt from the operation of the Metropolitan Buildings Act, 1855, and any Act amending the same, whether passed before or after the passing of this Act, except so far as any future Act expressly negatives this section.

5. All moneys received by the Secretary of State in Council of India in pursuance of this Act shall be applied as other moneys received from the sale of land vested in Her Majesty for the service of the Government of India under the India Act, 1858, are by law applicable.

SCHEDULE.

All the piece of land, containing twenty-seven thousand four hundred and forty square feet, or thereabouts, situate in the parish of St. Margaret, in the city of Westminster, and abutting on the north on Charles Street, on the west on Delabay Street, on the south on Gardener's Lane, and on the east on land belonging to the Commissioners of Works, as the same land is delineated on a plan signed by the Right Honourable George John Shaw

Lefevre, First Commissioner of Her Majesty's Works and Public Buildings, and by the Right Honourable Spencer Compton Cavendish, commonly called the Marquis of Hartington, one of Her Majesty's Principal Secretaries of State, and deposited at the Queen's Remembrancer's Office among the records of Her Majesty's High Court of Justice, and coloured red on the said plan.

CHAP. 8.

Consolidated Fund (No. 2) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of 1,536,571l. 4s. 2d. out of the Consolidated Fund for the service of the years ending 31st March 1880 and 1881.*
2. *Issue of 11,819,046l. out of the Consolidated Fund for the service of the year ending 31st March 1882.*
3. *Power to the Treasury to borrow.*
4. *Short title.*

An Act to apply certain Sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty, one thousand eight hundred and eighty-one, and one thousand eight hundred and eighty-two. (29th March 1881.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sums herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty and one thousand

eight hundred and eighty-one, the sum of one million five hundred and thirty-six thousand five hundred and seventy-one pounds four shillings and twopence.

2. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two, the sum of eleven million eight hundred and nineteen thousand and forty-six pounds.

3. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sums, any sum or sums not exceeding in the whole the sum of thirteen million three hundred and fifty-five thousand six hundred and seventeen pounds four shillings and twopence, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said sums were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

4. This Act may be cited as the Consolidated Fund (No. 2) Act, 1881.

CHAP. 9.

Army Discipline and Regulation (Annual) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Army Discipline and Regulation Act (42 & 43 Vict. c. 33.) to be in force for specified times.*

3. *Prices in respect of billeting.*
4. *Summary punishment.*
5. *Summary court-martial.*
6. *Abolition of corporal punishment.*
7. *Rules made in pursuance of this Act to be laid before Parliament.*

SCHEDULE.

An Act to provide during twelve months for the Discipline and Regulation of the Army. (8th April 1881.)

WHEREAS the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law :

And whereas it is adjudged necessary by Her Majesty, and this present Parliament, that a body of forces should be continued for the safety of the United Kingdom, and the defence of the possessions of Her Majesty's Crown, and that the whole number of such forces should consist of one hundred and thirty-four thousand and sixty men, including those to be employed at the depôts in the United Kingdom of Great Britain and Ireland for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within Her Majesty's Indian possessions :

And whereas it is also judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal Marine forces should be employed in Her Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid :

And whereas the said marine forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or merchant ships or vessels, or ships or vessels of Her Majesty, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of Her Majesty's forces by sea :

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of this realm ; yet nevertheless it being requisite, for the retaining all the before-mentioned forces, and other persons subject to military law, in their duty, that an exact discipline be observed, and that persons belonging to the said forces who mutiny or stir up sedition, or desert Her Majesty's service, or are guilty of crimes and

offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow :

And whereas the Army Discipline and Regulation Act, 1879, will expire—

- (a.) In the United Kingdom, the Channel Islands, and the Isle of Man, on the thirtieth day of April one thousand eight hundred and eighty-one ; and
- (b.) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, on the thirty-first day of July one thousand eight hundred and eighty-one ; and
- (c.) Elsewhere, whether within or without Her Majesty's dominions, on the thirty-first day of December one thousand eight hundred and eighty-one :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Army Discipline and Regulation (Annual) Act, 1881.

2. The Army Discipline and Regulation Act, 1879, shall be and remain in force during the periods herein-after mentioned, and no longer, unless otherwise provided by Parliament ; that is to say,

- (1.) Within the United Kingdom, the Channel Islands, and the Isle of Man, from the thirtieth day of April one thousand eight hundred and eighty-one to the thirtieth day of April one thousand eight hundred and eighty-two, both inclusive ; and
- (2.) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, from the thirty-first day of July one thousand eight hundred and eighty-one to the thirty-first day of July one thousand eight hundred and eighty-two, both inclusive ; and
- (3.) Elsewhere, whether within or without Her Majesty's dominions, from the thirty-first day of December one thousand eight hundred and eighty-one to the thirty-first day of December one thousand eight hundred and eighty-two, both inclusive ;

and the day from which the Army Discipline and Regulation Act, 1879, is continued in any

place by this Act is in relation to that place referred to in this Act as the commencement of this Act.

The Army Discipline and Regulation Act, 1879, while in force shall apply to persons subject to military law, whether within or without Her Majesty's dominions.

A person subject to military law shall not be exempted from the provisions of the Army Discipline and Regulation Act, 1879, by reason only that the number of the forces for the time being in the service of Her Majesty, exclusive of the marine forces, is either greater or less than the number herein-before mentioned.

3. There shall be paid to the keeper of a victualling house for the accommodation provided by him in pursuance of the Army Discipline and Regulation Act, 1879, the prices specified in the Schedule to this Act.

AMENDMENTS OF ARMY DISCIPLINE AND REGULATION ACT, 1879.

4. (1.) On and after the commencement of this Act, where a soldier on active service is guilty of an aggravated offence of drunkenness, or of an offence of disgraceful conduct, or of any offence punishable with death or penal servitude, it shall be lawful for a court-martial to award for that offence such summary punishment other than flogging as may be directed by rules to be made from time to time by one of Her Majesty's Principal Secretaries of State; and such summary punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb, and shall not be inflicted where the confirming officer is of opinion that imprisonment can with due regard to the public service be carried into execution.

(2.) The said summary punishment shall not be inflicted upon a non-commissioned officer, or upon a reduced non-commissioned officer, for any offence committed while holding the rank of non-commissioned officer.

(3.) "An aggravated offence of drunkenness" for the purposes of this section means drunkenness committed on the march or otherwise on duty, or after the offender was warned for duty, or when by reason of the drunkenness the offender was found unfit for duty; and notwithstanding anything contained in the Army Discipline and Regulation Act, 1879, it shall not be incumbent on the commanding officer to deal summarily with such aggravated offence of drunkenness.

(4.) "An offence of disgraceful conduct" for the purposes of this section means any offence specified in section eighteen of the Army Discipline and Regulation Act, 1879.

(5.) For the purpose of commutation of punishment the summary punishment above mentioned shall be deemed to stand in the scale of punishments next below penal servitude.

(6.) Any punishment which may, in pursuance of the Army Discipline and Regulation Act, 1879, be awarded in addition to imprisonment, may also be awarded in addition to a summary punishment under this section.

5. (1.) Where a person subject to military law and being on active service with any body of forces is charged, on and after the commencement of this Act, with an offence against the Army Discipline and Regulation Act, 1879, a summary court-martial may be convened and shall have jurisdiction to try such offence, if the officer convening the court is of opinion that an ordinary court-martial cannot, having due regard to the public service, be convened to try such offence.

(2.) A summary court-martial shall be convened and constituted, and the members and witnesses sworn, and its proceedings conducted, and its finding and sentence confirmed in such manner as may be provided by this section and rules from time to time made in pursuance of the Army Discipline and Regulation Act, 1879, as amended by this Act; and sections fifty to fifty-four (both inclusive) of that Act shall not apply to such court-martial, provided that,—

(a.) A summary court-martial shall consist of not less than three officers, unless the officer convening the same is of opinion that three officers are not available, having due regard to the public service, in which case the court-martial may consist of two officers; and

(b.) Where a summary court-martial consists of less than three officers the sentence shall not exceed such summary punishment as is allowed by this Act, or imprisonment; and

(c.) A sentence of death or penal servitude awarded by a summary court-martial shall not be carried into effect unless and until it has been confirmed by the general or field officer commanding the force with which the prisoner is present at the date of his sentence.

6. On and after the commencement of this Act there shall be repealed so much of the Army Discipline and Regulation Act, 1879, as prescribes corporal punishment for offences committed by persons subject to military law and convicted of such offences by court-martial; also so much of section seventy-two of the said Act as relates to field general courts-martial,

without prejudice to anything done or suffered in pursuance of the said section, and the finding and sentence of any such court held before the commencement of this Act may be confirmed and carried into effect after such commencement.

7. All rules made in pursuance of this Act shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

SCHEDULE.

Accommodation to be provided.	Maximum Price.
Lodging and attendance for soldier where hot meal furnished -	Twopence halfpenny per night.
Hot meal as specified in Part I. of the Second Schedule to the Army Discipline and Regulation Act, 1879.	One shilling and one penny halfpenny each.
Where no hot meal furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat.	Fourpence per day.
Ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse.	One shilling and ninepence per day.
Lodging and attendance for officer - - - -	Two shillings per night.

Note.—An officer shall pay for his food.

CHAP. 10.

Inland Revenue Buildings Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Lands, &c., in the United Kingdom for the service of the Inland Revenue to vest in Commissioners of Works.*
3. *Copyholds now vested in Commissioners of Inland Revenue to remain so, but in trust for Commissioners of Works.*
4. *As to completion of existing contracts.*
5. *Commissioners of Works empowered to purchase lands, &c. Incorporation of 8 & 9 Vict. c. 18., and 8 & 9 Vict. c. 19., &c.*
6. *Purchases, &c. subject to provisions of 15 & 16 Vict. c. 28.*

An Act for the transfer of Property held for the Use and Service of the Inland Revenue to the Commissioners of Her Majesty's Works and Public Buildings; and for other purposes.

(3rd June 1881.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and

Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Inland Revenue Buildings Act, 1881.

2. All manors, messuages, buildings, lands, tenements, and hereditaments of freehold or leasehold tenure in the United Kingdom which are now vested in the secretary or joint secretaries to the Commissioners of Inland Revenue.

or any other person, in trust for Her Majesty, her heirs and successors, for the use and service of the Inland Revenue, shall become and are hereby vested in the Commissioners of Her Majesty's Works and Public Buildings (herein-after called the Commissioners of Works) for the public service, and shall be subject to the provisions of the Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight, in all respects as if the same had been acquired under the provisions of that Act.

3. All lands of copyhold or customary tenure which are now vested in the secretary or joint secretaries to the Commissioners of Inland Revenue, or any other person, in trust for the same Commissioners, or for the service of the Inland Revenue, shall remain vested in such secretary or joint secretaries, or other person, but in trust for the Commissioners of Works for the public service, and shall be subject to the provisions of the said Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight, in all respects as if the same had been acquired under the provisions of that Act.

4. All contracts entered into by or on behalf of the Commissioners of Inland Revenue in respect of any lands or hereditaments in the United Kingdom for the service of the Inland Revenue, and not at the passing of this Act fully performed and completed, may be enforced, and shall be performed and completed for the public service, in like manner as if the Commissioners of Works had been parties

thereto instead of the Commissioners of Inland Revenue.

5. The Commissioners of Works shall, under and subject to the provisions of the said Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight, from time to time purchase, hire, or otherwise acquire such buildings, lands, or other hereditaments as may be necessary for the service of the Inland Revenue within the United Kingdom; and for the purposes of any such purchase the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation (Scotland) Act, 1845, and the Acts extending and amending the same respectively, except so much thereof as relates to the purchase of land otherwise than by agreement, are hereby incorporated with this Act, the special Act being construed to mean this Act, and the promoters of the undertaking being construed to mean the Commissioners of Works.

6. Every purchase, sale, exchange, or lease by the Commissioners of Her Majesty's Works under this Act shall be deemed to be a purchase, sale, exchange, or lease under the said Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight.

Provided that it shall not be necessary for any vendor, purchaser, lessor, or lessee to ascertain that the consent of the Commissioners of Her Majesty's Treasury to the purchase, sale, exchange, or lease by the Commissioners of Works has been given.

CHAP. 11.

Sea Fisheries (Clam and Bait Beds) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
 2. *Power of Board of Trade by Provisional Order to protect bait beds from injury by beam trawls.*
 3. *Persons who may apply for order.*
 4. *Application of provisions of 31 & 32 Vict. c. 45. relating to orders of the Board of Trade.*
 5. *Power to determine order.*
 6. *Power in order under 31 & 32 Vict. c. 45. to deal with order under this Act.*
 7. *Extent of Act.*
 8. *Recovery of fines.*
 9. *Interpretation.*
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An Act to further amend the law relating to Sea Fisheries by providing for the protection of Clam and other Bait Beds. (3rd June 1881.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Sea Fisheries (Clam and Bait Beds) Act, 1881.

2. Where the Board of Trade, on such application and after such local inquiry as in this Act mentioned, are satisfied that the unrestricted use of beam trawls in any area being part of the sea adjoining the United Kingdom, and within the territorial waters of Her Majesty's dominions, within the meaning of the Territorial Waters Jurisdiction Act, 1878, is injurious to any clam or other bait bed in that area, the Board of Trade may make an order for restricting or prohibiting or for empowering the authority named therein to restrict or prohibit, either entirely or subject to such regulations as may be provided by the order, the use of any beam trawl for taking sea fish within the area named in the order during such term of years, or during such period either in every year or in a term of years, as is limited by the order.

The Board of Trade may, by any such order, provide for enforcing the order, and any restriction, prohibition, or regulation contained therein by fines not exceeding twenty pounds for each offence; and the authority empowered by the order may be any person or body of persons corporate or unincorporate, and may, if it seem expedient, be constituted by the order.

An order under this section shall be subject to such confirmation by Parliament or otherwise as in this Act mentioned.

3. An application to the Board of Trade for an order under this Act in relation to any locality may be made by memorial in that behalf presented to the Board of Trade by any persons appearing to the Board of Trade to represent the fishermen of the locality, or by any of the following authorities, if they appear to the Board of Trade to be interested in the fisheries of the locality; namely,

The justices of a county in general or quarter sessions assembled, or in Scotland the commissioners of supply of any county;

A town council or other urban sanitary authority;

A rural sanitary authority; and

Any body corporate, persons or person being or claiming to be proprietors or proprietor of or intrusted with the duty of improving managing maintaining or regulating any harbour.

4. For the purposes of an order under this Act, and the local inquiry, confirmation, and other matters in reference thereto, sections thirty to thirty-nine (both inclusive), sections forty-two and forty-three, section forty-six, and sections forty-eight to fifty (both inclusive), of the Sea Fisheries Act, 1868, shall apply as if those sections were re-enacted in this Act with the necessary modifications; and with the substitution of the applicants for an order under this Act for "the promoters."

Provided, that where an order made under this Act either is limited to an area not exceeding five acres, or amends a previous order without extending the area to which that order applies, and a petition against the order by any local authority or persons affected thereby is not within one month after the first publication of the order received by the Board of Trade, or if received is withdrawn, the Board of Trade may, if they think fit, submit the order for confirmation to Her Majesty in Council; and every such order, if confirmed by Her Majesty in Council, shall have full operation as if it had been confirmed by Parliament.

5. An order made under this Act, and confirmed by Order in Council, may, notwithstanding anything in the order, be determined either wholly or partially at any time by Her Majesty in Council on the representation of the Board of Trade (which the Board may make after such inquiry as they may think necessary); and the authority empowered by the order shall not be entitled to any compensation in respect of such determination or in respect of any expenses incurred by them in acting or with a view to act under the order.

6. An order made by the Board of Trade under Part III. of the Sea Fisheries Act, 1868, may, if the Board see fit, contain provisions repealing or amending all or any of the provisions contained in an order made under this Act.

7. This Act shall not extend to Ireland, but may be extended to the Isle of Man, if an Act shall be passed by the Legislature of the said Isle adopting the same.

8. All fines and proceedings under this Act, or under any order made and confirmed in pursuance of this Act, may be recovered and taken in the same manner as fines and proceedings are recovered and taken under the Sea Fisheries Act, 1868, and any Act amending the same.

9. In this Act, unless the context otherwise requires, the expression "beam trawl" means a net commonly known as a beam trawl net, and any other engine or instrument (not being a dredge for oysters) which is used or capable of being used for dragging along the bottom of the sea for the purpose of taking fish.

CHAP. 12.

Customs and Inland Revenue Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

PART I.

CUSTOMS AND EXCISE.

As to Customs.

2. *Import duties on tea.*
3. *Alteration of customs duties on beer.*
4. *Drawback on the exportation of imported beer.*
5. *Provisions as to importation of beer.*
6. *Beer imported may be exported.*
7. *Alteration of duties on spirits imported.*
8. *Mode of testing in case of obscuration.*
9. *Time and place for landing goods inwards.*
10. *Time and places for landing and shipping coastwise.*
11. *Specifications for free goods six days after clearance. Forms Nos. 8 and 9. Except as to salmon.*
12. *Persons may be searched if officers have reason to suspect smuggled goods are concealed upon them. Rescuing goods. Rescuing persons. Assaulting or obstructing officers. Attempting the foregoing offences. Penalty.*
13. *Certain sections of this Act incorporated in 39 & 40 Vict. c. 36.*

As to Excise.

14. *Brewer's licence. Annual value of house exceeding 10l. and not exceeding 15l.*
15. *Provisions with regard to brewers other than brewers for sale.*
16. *Allowance granted to rectifiers and compounders on spirits exported.*

Miscellaneous.

17. *Provisions as to warehousing foreign wine in an excise warehouse.*
18. *Goods liable to a duty of customs or excise may be warehoused in a customs or excise warehouse.*

PART II.

TAXES.

19. *Grant of duties of income tax.*
20. *Provisions of Income Tax Acts to apply to duties hereby granted.*
21. *Provisions of Income Tax Acts to apply to duties to be granted for succeeding year.*
22. *Assessment of income tax under Schedules (A) and (B), and of the inhabited house duties for the year 1881-82.*
23. *Particulars to be stated in collectors receipts.*
24. *Interpretation of "servant" and "other person" in exemption from inhabited house duty.*
25. *Amendment of 43 & 44 Vict. c. 19. s. 53.*

PART III.

STAMPS.

As to Probate and Legacy Duties, and Duties on Accounts.

26. *Stamp duties to be under the care and management of the Commissioners of Inland Revenue.*
27. *Grant of duties in respect of probate and letters of administration and on inventories.*
28. *Power to deduct debts and funeral expenses where deceased died domiciled in the United Kingdom.*
29. *As to forms of affidavit.*
30. *Probate or letters of administration to bear a certificate in lieu of stamp duty.*
31. *Provision for return of duty overpaid.*
32. *Provision for payment of further duty.*
33. *Provisions as to obtaining probate, &c. where gross value of estate does not exceed 300l.*
34. *Provision as to inventories where gross value of estate does not exceed 300l.*
35. *Provision in case of subsequent discovery that the value of estate exceeded 300l.*
36. *Relief from legacy duty in cases under 300l.*
37. *Power to Commissioners to require explanations and proof in support of affidavit or inventory.*
38. *Grant of duties on accounts of certain property.*
39. *Delivery of accounts on oath.*
40. *Double duty payable in case of default.*
41. *Cesser of legacy and succession duties at the rate of one per cent. in certain cases.*
42. *Charge of legacy duty on legacies not amounting to 20l.*
43. *Power to Commissioners to accept composition for legacy duty under a will.*

Miscellaneous.

44. *Amendments of 33 & 34 Vict. c. 97.*
45. *Stamp duty on transfers of county stock.*
46. *Stamp duty on stock certificates to bearer.*
47. *Stamp duties of one penny may be denoted by postage stamps and vice versâ.*
48. *Repeal of enactments in Schedule.*

SCHEDULE.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue. (3rd June 1881.)

Most Gracious Sovereign,—

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Customs and Inland Revenue Act, 1881.

PART I.

CUSTOMS AND EXCISE.

As to Customs.

2. The duties of customs now chargeable upon tea shall continue to be levied and charged on and after the first day of August one thousand eight hundred and eighty-one until the first day of August one thousand eight hundred and eighty-two, on the importation thereof into Great Britain or Ireland; (that is to say,)

Tea, the pound - - Sixpence.

3. In lieu of the duties of customs now payable under the Customs Tariff Act, 1876, on beer and ale, there shall be charged and paid the duties following; (that is to say,)

For every thirty-six gallons of beer of the descriptions called mum, spruce, or black beer,

Where the worts thereof were before fermentation of a specific gravity—
£ s. d.

Not exceeding one thousand two hundred and fifteen degrees - - 1 6 0

Exceeding one thousand	£	s.	d.
two hundred and fifteen			
degrees - - -	1	10	6
For every thirty-six gallons of			
beer of any other description			
Where the worts thereof			
were before fermentation			
of a specific gravity of—			
One thousand and fifty-			
seven degrees - - -	0	6	6
And so in proportion for any difference in			
gravity.			

4. In respect of all beer imported or brought into Great Britain or Ireland, and subsequently exported as merchandise, or shipped for use as ship stores, or removed to the Isle of Man, and on which beer the duties of customs under this Act shall have been paid, there shall be allowed and paid the drawback under section thirty-six of the Inland Revenue Act, 1880, upon the exportation of beer brewed in the United Kingdom.

5. (1.) The importer of any beer into Great Britain or Ireland, or his agent, and any person bringing in beer into Great Britain or Ireland from the Isle of Man, or his agent, shall deliver to the proper officer of customs at the place at or to which the beer is so imported or brought in, a declaration of the original gravity of the worts from which the beer was brewed, such declaration to be duly verified by signature, and to be in such form as the Commissioners of Customs may direct.

(2.) For the purpose of charging the proper duty of customs on beer so imported or brought in, the original gravity of the beer may be ascertained by an officer of customs, or an officer of inland revenue, in the manner provided by section fifteen of the Inland Revenue Act, 1880, for determining the original gravity of beer brewed in the United Kingdom, and duty shall be charged according to the gravity stated in the declaration or that ascertained by the officer whichever shall be the highest.

(3.) If the gravity ascertained by the officer shall exceed by two per centum the gravity stated in the declaration the beer shall be forfeited, and, if the gravity so ascertained shall exceed by five per centum the gravity stated in the declaration, the importer or person bringing in the beer, and the agent declaring, if any, shall forfeit a penalty of one hundred pounds.

6. (1.) It shall be lawful for any person to export as merchandise to foreign parts or for use as ship's stores, or to remove to the Isle of Man any beer imported or brought into Great

Britain or Ireland, and, except as is herein-after provided, the enactments contained in sections thirty-seven, thirty-eight, and thirty-nine of the Inland Revenue Act, 1880, shall extend and apply to the exportation or removal of beer imported or brought in.

(2.) It shall not be necessary for the declaration mentioned in section thirty-seven of the said Act to be produced upon the exportation or removal of beer imported or brought in; but the notice thereby required to be given to the proper officer at the place from which the beer is to be exported or removed shall specify that the full duties of customs have been charged and paid upon the beer, and such notice, which may be given by the exporter or his agent, shall be duly verified by signature, and shall be deemed an instrument within section one hundred and sixty-eight of the Customs Consolidation Act, 1876.

7. In lieu of the duties of customs now payable under the Customs Tariff Act, 1876, on spirits or strong waters, and of the duties of excise on spirits manufactured or distilled in the islands of Guernsey, Jersey, Alderney, and Sark respectively, and imported into the United Kingdom, there shall be charged and paid the duties of customs following; (that is to say,)

	£	s.	d.
For every gallon computed at			
hydrometer proof of spirits of			
any description (except per-			
fumed spirits) including			
naphtha or methylic alcohol,			
purified so as to be potable,			
and mixtures and prepara-			
tions containing spirits -	0	10	4
For every gallon of perfumed			
spirits - - -	0	16	6

And so in proportion for any less quantity.

Where a person importing liqueurs, cordials, or other preparations containing spirits in bottle, may have entered the same in such a manner as to indicate that the strength is not to be tested, duty shall be charged and paid at the rate following; (that is to say.)

	£	s.	d.
For every gallon thereof -	0	14	0

And so in proportion for any less quantity.

8. In any case where by reason of the presence of colouring, sweetening, or other matter, the correct strength of any spirit cannot be immediately ascertained by Sykes's hydrometer, a sample of such spirit may be distilled or treated by such other process as the Commissioners of Customs may direct, so that the true strength of the spirit may be ascertained by the said hydrometer.

9. No goods, except diamonds and bullion, and lobsters and fresh fish of British taking, imported in British ships, which goods may be landed without report or entry, shall be unshipped from any ship arriving from parts beyond the seas, or be landed or put on shore on Sundays or holidays, except by special permission of the Commissioners of Customs; nor shall they be unshipped, landed, or put on shore on any other days except between the hours of eight o'clock in the morning and four o'clock in the afternoon from the first day of March to the thirty-first day of October, both inclusive, and between the hours of nine o'clock in the morning and four o'clock in the afternoon during the remainder of the year, or between such other hours as may be appointed by the Commissioners of Customs; nor shall any goods whatever be unshipped or landed at any time unless in the presence or with the authority of the proper officer of customs, nor shall they be so landed except at some legal quay, wharf, or other place duly appointed for the landing or unshipping of goods, nor shall any goods after having been unshipped or put into any boat or craft to be landed, be transhipped or removed into any other boat or craft previously to their being landed, without the permission of the proper officer of customs; and if any goods shall be unshipped or removed from any importing ship for the purpose of being landed they shall be forthwith taken to and landed at the wharf, quay, or other place at which the same are intended to be landed. If any goods shall be unshipped, landed, transhipped, removed, or dealt with contrary to the provisions of this section they shall be forfeited, together with the barge, lighter, boat, or other vessel employed in removing the same.

10. If any goods shall be unshipped from any ship arriving coastwise, or be shipped or waterborne to be shipped for carriage coastwise on Sundays or holidays, except by the special permission of the Commissioners of Customs, or on any other day unless in the presence or with the authority of the proper officer of customs, or unless at such times and places as shall be appointed or approved by him for that purpose, the same shall be forfeited, and the master of the ship shall forfeit the penalty of fifty pounds.

11. The exporter of goods for which no bond is required shall (except as herein-after provided) within six days after the final clearance outwards of the exporting ship, or within such other period as the Commissioners of Customs may direct, either by himself or his agent, deliver to the proper officer of

customs at the port of shipment a specification in the Form No. 8 or No. 9 in Schedule B. to the Customs Consolidation Act, 1876, according to the nature of the goods, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct, and shall subscribe the declaration at the foot thereof, and on the demand of the proper officer of customs shall produce the invoice bills of lading and other documents relating to the goods to test the accuracy of such specification; and on failure to comply with any of the foregoing requirements, the exporter or agent shall for every such offence forfeit five pounds; and in case any of the particulars contained in any such specification shall be incorrect or inaccurate, the person subscribing the declaration shall forfeit the like penalty.

Provided always that no salmon shall be shipped to be exported without previous entry thereof in accordance with the Salmon Fishery Acts for the time being, nor except upon due compliance in all other respects with the provisions of such Acts.

12. Any officer of customs or other person duly employed in the prevention of smuggling may search any person on board any ship or boat within the limits of any port in the United Kingdom or the Channel islands, or any person who shall have landed from any ship or boat, provided such officer or other person duly employed as aforesaid shall have good reason to suppose that such person is carrying or has any uncustomed or prohibited goods about his person.

A person shall be guilty of an offence—

- (1.) If he staves, breaks, or destroys any goods to prevent the seizure thereof by an officer of customs or other person authorised to seize the same.
- (2.) If he rescues, or staves, breaks or destroys to prevent the securing thereof any goods seized by an officer of customs or other person authorized to seize the same.
- (3.) If he rescues any person apprehended for any offence punishable by fine or imprisonment under the Customs Acts.
- (4.) If he prevents the apprehension of any such person.
- (5.) If he assaults or obstructs any officer of customs, or any officer of the Army, Navy, Marines, Coast Guard, or other person duly employed for the prevention of smuggling, going, remaining, or returning from on board a ship or boat within the limits of any port in the United Kingdom or the Channel islands, or in search-

ing such a ship or boat, or in searching a person who has landed from any such ship or boat, or in seizing any goods liable to forfeiture under the Customs Acts, or otherwise acting in the execution of his duty.

(6.) If he attempts or endeavours to commit, or aids, abets, or assists in the commission of any of the offences mentioned in this section.

And a person so offending shall for each such offence forfeit the penalty of not exceeding one hundred pounds, and he may either be detained or proceeded against by information and summons.

13. Sections five, six, nine, ten, eleven, and twelve of this Act shall be deemed and taken to be incorporated in and form part of the Customs Consolidation Act, 1876, and shall be read and construed therewith, and the provisions of that Act shall be deemed to relate to and be applicable to such sections in the same manner and to the same extent as if the same sections had been originally enacted therein; and each of the said sections nine, ten, eleven, and twelve shall take the place of sections forty-eight, one hundred and forty-three, one hundred and ten, and one hundred and eighty-four respectively of the said Act, and section eight of this Act shall apply to the Isle of Man, so far as relates to all spirits charged with duty by reference to hydrometer strength.

As to Excise.

14. (1.) On and after the first day of October, one thousand eight hundred and eighty-one, there shall be granted and paid on a licence to be taken out annually by a brewer (not being a brewer for sale) who shall be the occupier of a house of an annual value exceeding ten pounds, and not exceeding fifteen pounds, the duty of - - - £0 9s. 0d.

(2.) The provisions in sub-sections two and three of section ten of the Inland Revenue Act, 1880, shall apply to such licence as if it had been one of the licences mentioned in sub-section one of that section.

15. (1.) In charging the duty on beer brewed by a brewer other than a brewer for sale under section thirteen of the Inland Revenue Act, 1880, a deduction of six per centum shall be made from the quantity of worts deemed to have been brewed by him by relation to materials.

(2.) The exemption from the duty on beer under section thirty-three of the said Act shall extend to beer brewed by a brewer or other than a brewer for sale, occupying a house of an annual value exceeding ten pounds but not

exceeding fifteen pounds, provided that the beer is brewed solely for his own domestic use.

(3.) A licence to a brewer other than a brewer for sale shall not authorise the brewing of beer in more than one house to be mentioned therein, nor shall such a licence be transferred to any person other than the widow of the person to whom the same was granted or to his executors or administrators or assignee or trustee in bankruptcy.

(4.) The term "house" as used in this section and in sections thirty-three and thirty-four of the said Act means and includes a dwelling-house together with the offices, courts, yards and gardens occupied therewith.

(5.) The annual value of a house occupied by a brewer other than a brewer for sale shall be ascertained by such means as the Commissioners of Inland Revenue shall think fit, but an appeal shall lie from their valuation to the Commissioners for the general purposes of Income Tax for the division in which the house is situate, and their decision shall be final.

16. The allowance of threepence per gallon, payable to any licensed rectifier or compounder under section four of the Act of the twenty-third and twenty-fourth years of Her Majesty's reign, chapter one hundred and twenty-nine, or section twelve of the Act of the twenty-eighth and twenty-ninth years of Her Majesty's reign, chapter ninety-eight, shall be increased to fourpence per gallon.

Miscellaneous.

17. (1.) Foreign wine warehoused in a customs warehouse of which an account has been taken by the proper officer of customs, may, upon such security being given, and subject to such regulations being observed as the Commissioners of Customs or the Commissioners of Inland Revenue respectively shall from time to time prescribe, be removed, without payment of duty, to an excise warehouse, and from thence to any other exercise or customs warehouse or for exportation or ships' stores.

(2.) Foreign wine warehoused in an excise warehouse, may, upon payment of the proper duties of customs, be delivered for home consumption.

(3.) The enactments contained in the Spirits Act, 1880, in relation to a proprietor or occupier of an excise warehouse, and to a proprietor of spirits warehoused, and to the warehousing and treatment of spirits in an excise warehouse, and the delivery of the same thereout, and the collecting and accounting for the duty thereon, shall have effect in relation to foreign

wine warehoused in the same manner and to the same extent as if the term foreign wine was included in the term spirits, wherever used in those enactments.

18. (1.) Subject to such regulations as the Commissioners of Customs or the Commissioners of Inland Revenue may from time to time prescribe, goods of any description liable to a duty of customs or excise may be warehoused in any customs or excise warehouse approved by the Commissioners of Her Majesty's Treasury for the purpose.

(2.) All the powers, provisions, regulations, and penalties contained in or imposed by any Act relating to the customs and excise respectively as to the warehousing, custody, and delivery out of warehouse of goods liable to a duty of customs or excise, and as to any deficiencies therein, or allowances thereon, shall where applicable be observed, applied, enforced, and put into execution with reference to such goods warehoused in excise and customs warehouses respectively.

PART II.

TAXES.

19. There shall be charged, collected, and paid for the year commencing on the sixth day of April one thousand eight hundred and eighty-one, in respect of all property, profits, and gains mentioned or described as chargeable in the Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four, the following duties of income tax; (that is to say,)

For every twenty shillings of the annual value or amount of property, profits, and gains chargeable under Schedules (A), (C), (D), or (E), of the said Act, the duty of fivepence;

And for every twenty shillings of the annual value of the occupation of lands, tenements, hereditaments, and heritages chargeable under Schedule (B) of the said Act.

In England, the duty of twopence half-penny.

In Scotland and Ireland respectively, the duty of one penny three farthings.

20. All such provisions contained in any Act relating to income tax as are now in force shall have full force and effect with respect to the duties of income tax granted by this Act, so far as the same shall be consistent with the provisions of this Act.

21. In order to ensure the collection in due time of any duties of income tax which may be granted for the year commencing on the sixth day of April one thousand eight hundred and eighty-two, all such provisions contained in any Act relating to the duties of income tax as are in force on the fifth day of April one thousand eight hundred and eighty-two shall have full force and effect with respect to the duties of income tax which may be so granted in the same manner as if the said duties had been actually granted, and the said provisions had been applied thereto by an Act of Parliament passed on that day.

22. With respect to the assessment of the duties of income tax hereby granted under Schedules (A) and (B) in respect of property elsewhere than in the Metropolis as defined by the Valuation (Metropolis) Act, 1869, and of the duties on inhabited houses elsewhere than in the said Metropolis, for the year commencing, as respects England, on the sixth day of April, and as respects Scotland, on the twenty-fourth day of May, one thousand eight hundred and eighty-one, the following provisions shall have effect:—

(1.) The inspectors or surveyors of taxes shall be the assessors for the said duties, and in lieu of the poundage by law granted to be divided between the assessors and collectors in regard to such duties there shall be paid a poundage of three halfpence to the collectors thereof.

(2.) The sum charged as the annual value of any property in the assessment of income tax thereon for the year which commenced on the sixth day of April, one thousand eight hundred and eighty, and the sum charged as the annual value of every inhabited house in the assessment made thereon for the same year as respects England, and as respects Scotland for the year which commenced on the twenty-fifth day of May, one thousand eight hundred and eighty, shall be taken as the annual value of such property or of such inhabited house for the assessment and charge thereon of the duties of income tax hereby granted or of the duties on inhabited houses, to all intents and purposes as if such sum had been estimated to be the annual value in conformity with the provisions in that behalf contained in the Acts relating to income tax and the duties on inhabited houses respectively.

(3.) The Commissioners executing the said Act shall, for each place within their district, cause duplicates of the assessments

to be made out and delivered to the collectors, together with the warrants for collecting the same.

23. Where any collector of the duties on inhabited houses and of income tax under Schedules A. and B. has not, in a demand note delivered previous to payment, distinctly described the property assessed, and specified the amount of the assessment, and the rate at which the duties are charged, the description of the property, the amount of the assessment, and the rate of charge shall be specified in the receipt.

24. With reference to the exception from the duties on inhabited houses given by sub-section two of section thirteen of the Customs and Inland Revenue Act, 1878, the term "servant" shall be deemed to mean and include only a menial or domestic servant employed by the occupier, and the expression "other person" shall be deemed to mean any person of a similar grade or description not otherwise employed by the occupier, who shall be engaged by him to dwell in the house or tenement solely for the protection thereof.

25. Sub-section one of section fifty-three of the Taxes Management Act, 1880, shall not apply to Scotland.

27. The duties imposed by the Customs and Inland Revenue Act, 1880, upon probates of wills and letters of administration in England and Ireland shall not be payable upon probates or letters of administration granted on and after the first day of June one thousand eight hundred and eighty-one; and on and after that day in substitution for such duties, and in lieu of the duties imposed by the said Act upon inventories in Scotland, there shall, save as is herein-after expressly provided, be charged and paid on the affidavit to be required and received from the person applying for the probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland, the stamp duties herein-after specified; (that is to say,)

Where the estate and effects for or in respect of which the probate or letters of administration is or are to be granted, or whereof the inventory is to be exhibited and recorded, exclusive of what the deceased shall have been possessed of or entitled to as trustee, and not beneficially, shall be above the value of 100*l.*, and not above the value of 500*l.* - - - - -

Where such estate and effects shall be above the value of 500*l.*, and not above the value of 1000*l.* - - - - -

Where such estate and effects shall be above the value of 1000*l.* - - - - -

PART III.

STAMPS.

As to Probate and Legacy Duties, and Duties on Accounts.

26. (1.) The stamp duties herein-after imposed shall be under the care and management of the Commissioners of Inland Revenue, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are by law vested in them for the collection, recovery, and management of any stamp duties, and shall have all other powers and authorities requisite for carrying into effect the provisions of this Act in relation to such stamp duties.

(2.) Such stamp duties may be denoted by impressed or adhesive stamps, or partly by impressed stamps and partly by adhesive stamps, as the said Commissioners may think proper.

(3.) As respects the duties imposed on affidavits in substitution for the duties on probates or letters of administration, the several provisions now in force in relation to the last-mentioned duties shall, so far as the same are consistent with the provisions of this Act, be deemed to be applicable to the said duties hereby imposed, and in the application thereof a probate or letters of administration having thereon such a certificate as is herein-after mentioned shall for all purposes be deemed to have been duly stamped in respect of the value stated in the certificate.

DUTY.

At the rate of one pound for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multiple of 50*l.*;

At the rate of one pound five shillings for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multiple of 50*l.*;

At the rate of three pounds for every full sum of 100*l.*, and for any fractional part of 100*l.* over any multiple of 100*l.*;

Provided that an additional inventory, to be exhibited or recorded in Scotland, of any effects of a deceased person, where a former inventory of the estate and effects of the same person has been exhibited and recorded prior to the first day of June one thousand eight hundred and eighty-one, shall be chargeable with the amount of stamp duty with which it would have been chargeable if this Act had not been passed.

28. On and after the first day of June one thousand eight hundred and eighty-one, in the case of a person dying domiciled in any part of the United Kingdom, it shall be lawful for the person applying for the probate or letters of administration in England or Ireland, or exhibiting the inventory in Scotland, to state in his affidavit the fact of such domicile, and to deliver therewith or annex thereto a schedule of the debts due from the deceased to persons resident in the United Kingdom, and the funeral expenses, and in that case, for the purpose of the charge of duty on the affidavit or inventory, the aggregate amount of the debts and funeral expenses appearing in the schedule shall be deducted from the value of the estate and effects as specified in the account delivered with or annexed to the affidavit, or whereof the inventory shall be exhibited.

Debts to be deducted under the power hereby given shall be debts due and owing from the deceased and payable by law out of any part of the estate and effects comprised in the affidavit or inventory, and are not to include voluntary debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been bona fide delivered to the donee thereof three months before the death of the deceased, or debts in respect whereof any real estate may be primarily liable or a reimbursement may be capable of being claimed from any real estate of the deceased or from any other estate or person.

Funeral expenses to be deducted under the power hereby given shall include only such expenses as are allowable as reasonable funeral expenses according to law.

29. The affidavit to be required or received from any person applying for probate or letters of administration in England or Ireland shall extend to the verification of the account of the estate and effects, or to the verification of such account and the schedule of debts and funeral expenses, as the case may be, and shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty's Treasury; and the Commissioners of Inland Revenue shall provide forms of affidavit stamped to denote the duties payable under this Act.

30. No probate or letters of administration shall be granted by the Probate, Divorce, and Admiralty Division of the High Court of

Justice in England, or by the Probate and Matrimonial Division of the High Court of Justice in Ireland, unless the same bear a certificate in writing under the hand of the proper officer of the court, showing that the affidavit for the Commissioners of Inland Revenue has been delivered, and that such affidavit, if liable to stamp duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account.

31. If at any time after the grant of probate or letters of administration, and during the administration of the estate, the value mentioned in the certificate of the officer of the court shall be found to exceed the true value of the personal estate and effects of the deceased, or if at any time within three years after the grant, or within such further period as the Commissioners of Inland Revenue may allow, it shall appear that no amount or an insufficient amount was deducted on account of debts and funeral expenses, it shall be lawful for the said Commissioners, upon proof of the facts to their satisfaction, to return the amount of stamp duty which shall have been overpaid, and to cause a certificate to be written by an authorised officer on the probate or letters of administration setting forth such true value, or, as the case may be, the amount, or corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the Court.

32. If at any time it shall be discovered that the personal estate and effects of the deceased were at the time of the grant of probate or letters of administration of greater value than the value mentioned in the certificate, or that any deduction for debts or funeral expenses was made erroneously, the person acting in the administration of such estate and effects shall, within six months after the discovery, deliver a further affidavit with an account to the Commissioners of Inland Revenue, duly stamped for the amount which, with the duty (if any) previously paid on an affidavit in respect of such estate and effects, shall be sufficient to cover the duty chargeable according to the true value thereof, and shall at the same time pay to the said Commissioners interest upon such amount at the rate of five pounds per centum per annum from the date of the grant, or from such subsequent date as the said Com-

missioners may in the circumstances think proper.

The Commissioners of Inland Revenue, upon the receipt of such affidavit duly stamped as aforesaid, shall cause a certificate to be written by an authorised officer on the probate or letters of administration setting forth the true value of the estate and effects as then ascertained, or, as the case may be, the corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the court.

33. (1.) Where the whole personal estate and effects of any person dying on or after the first day of June one thousand eight hundred and eighty-one (inclusive of property by law made such personal estate and effects for the purpose of the charge of duty, and any personal estate and effects situate out of the United Kingdom), without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, it shall be lawful for the person intending to apply for probate or letters of administration in England or Ireland, to deliver to the proper officer of the court or to any officer of inland revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum of fifteen shillings for fees of court and expenses, and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty.

(2.) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of three hundred pounds, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

(3.) The principal registrars of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, and of the Probate and Matrimonial Division of the High Court of Justice in Ireland, in communication with the Commissioners of Inland Revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of Inland Revenue, the steps to be taken for the preparation and filling up of forms and documents, and generally all matters which may be necessary, so as to authorise the grant of probate or letters of administration.

(4.) Officers of Inland Revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of letters of administration, to attest the bond and accept

the same on behalf of the President or Judge of the Division.

(5.) Where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the affidavit for the Commissioners of Inland Revenue shall be the fixed duty of thirty shillings, and no more.

34. (1.) The Intestates, Widows, and Children (Scotland) Act, 1875, and the Small Testate Estate (Scotland) Act, 1876, as amended by the Sheriffs Court (Scotland) Act, 1876, shall be extended so as to apply to any case where the whole personal estate and effects of a person dying on or after the first day of June one thousand eight hundred and eighty-one, without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, whoever may be the applicant for representation, and wheresoever the deceased may have been domiciled at the time of death, and the fees payable under schedule C. of each of the two first-mentioned Acts shall not exceed the sum of fifteen shillings, inclusive of the fee of two shillings and sixpence, to be paid to the commissary clerk, or sheriff clerk.

(2.) In any such case where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the inventory shall be the fixed duty of thirty shillings, and no more.

35. Where representation has been obtained in conformity with either of the two preceding sections, and it shall be at any time afterwards discovered that the whole personal estate and effects of the deceased were of a value exceeding three hundred pounds, then a sum equal to the stamp duty payable on an affidavit or inventory in respect of the true value of such estate and effects shall be a debt due to Her Majesty from the person acting in the administration of such estate and effects, and no allowance shall be made in respect of the sums deposited or paid by him, nor shall the relief afforded by the next succeeding section be claimed or allowed by reason of the deposit or payment of any sum.

36. The payment of the sum of thirty shillings for the fixed duty on the affidavit or inventory in conformity with this Act shall be deemed to be in full satisfaction of any claim to legacy duty or succession duty in respect of the estate or effects to which such affidavit or inventory relates.

37. It shall be lawful for the Commissioners of Inland Revenue at any time and from time to time within three years after the grant of

probate or letters of administration or recording of inventory, as they may think necessary, to require the person acting in the administration of the estate and effects of any deceased person, to furnish such explanations, and to produce such documentary or other evidence respecting the contents of, or particulars verified by, the affidavit or inventory as the case may seem to them to require.

38. (1.) Stamp duties at the like rates as are by this Act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or moveable property to be included therein according to the value thereof.

(2.) The personal or moveable property to be included in an account shall be property of the following descriptions, viz. :—

(a.) Any property taken as a *donatio mortis causâ* made by any person dying on or after the first day of June one thousand eight hundred and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bonâ fide* made three months before the death of the deceased.

(b.) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(c.) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3.) Where an account delivered duly stamped comprises property passing under a voluntary settlement, and, upon the production of the settlement, it shall appear that the stamp duty of five shillings per centum has been paid

thereon according to the amount or value of the property so passing, or any part thereof, the amount of such stamp duty shall be returned to the person delivering the account.

39. Every person who as beneficiary, trustee, or otherwise, acquires possession, or assumes the management, of any personal or moveable property of a description to be included in an account according to the preceding section shall upon retaining the same for his own use, or distributing or disposing thereof, and in any case within six calendar months after the death of the deceased deliver to the Commissioners of Inland Revenue a full and true account, verified by oath, of such property duly stamped as required by this Act. Any officer authorised by the Commissioners for the purpose may administer the oath.

40. If any person who ought to obtain probate or letters of administration or deliver a further affidavit or to exhibit an inventory or who is required to deliver such account as aforesaid shall neglect to do so within the period prescribed by law for the purpose, he shall be liable to pay to Her Majesty double the amount of duty chargeable, and the same shall be a debt due from him to the Crown, and be recoverable by any of the ways or means now in force for the recovery of probate, legacy, or succession duties.

41. In respect of any legacy, residue, or share of residue payable out of, or consisting of any estate or effects according to the value whereof duty shall have been paid on the affidavit or inventory or account, in conformity with this Act, the duty at the rate of one pound per centum imposed by the Act of the fifty-fifth year of King George the Third, chapter one hundred and eighty-four, shall not be payable;

And in respect of any succession to property according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with this Act, the duty at the rate of one pound per centum imposed by the Succession Duty Act, 1853, shall not be payable.

42. Subject to the relief from legacy duty given by section thirteen of the Customs and Inland Revenue Act, 1880, every pecuniary legacy or residue or share of residue under the will or the intestacy of a person dying on or after the first day of June one thousand eight hundred and eighty-one, although not of an amount or value of twenty pounds, shall be chargeable to the duties imposed by the said

Act of the fifty-fifth year of King George the Third, chapter one hundred and eighty-four, as modified by this Act.

43. It shall be lawful for the Commissioners of Inland Revenue, upon the application of the person acting in the execution of the will of any deceased person, and upon the delivery to them of an account showing the amount of the estate and effects in respect whereof legacy duty is payable, together with the names or description of class of the persons entitled thereto and every part thereof, in possession or expectancy, and their degrees of consanguinity to the testator, to assess the duty upon the amount shown by the said account at such a sum by way of composition as, having regard to the circumstances, shall appear to be proper, and to accept payment of the duty so assessed in full discharge of all claims for legacy duty under such will.

If the Commissioners are of opinion that an application should receive the assent of any person, they shall refuse to entertain the application until such assent shall have been given.

Miscellaneous.

44. On and after the first day of June one thousand eight hundred and eighty-one, the Stamp Act, 1870, shall be amended as follows:

(a.) Section sixteen in relation to the production of instruments in evidence shall apply to such production in all proceedings before an arbitrator or referee, and for the purposes of such application the arbitrator or referee shall be "the officer" as well as "the judge" in the said section mentioned:

(b.) Sub-section (2) of section one hundred and seventeen in relation to the time within which a policy of sea insurance made or executed out of the United Kingdom may be stamped, shall be read as if the words "fourteen days" were substituted therein for the words "two months":

(c.) Section one hundred and nineteen shall not apply so as to allow the ad valorem stamp duties on policies of insurance upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives, to be denoted by adhesive stamps.

45. Where the justices of any county, liberty, riding, parts, or division of a county, shall be empowered by any Act of Parliament to create "county stock," the transfers of such stock shall be chargeable with stamp duty as if they were transfers of the debenture stock of a company or corporation.

46. (1.) Every "stock certificate to bearer" which shall, after the passing of this Act, be issued under the provisions of the Local Authorities Loans Act, 1875, or of any other Act authorising the creation of debenture stock, county stock, corporation stock, municipal stock, or funded debt, by whatever name known, shall be charged with the stamp duty of seven shillings and six pence, for every full sum of one hundred pounds, and also for any fraction less than one hundred pounds, or over and above one hundred pounds, or a multiple of one hundred pounds, of the nominal amount of the stock described in the certificate.

(2.) Where the holder of any stock certificate to bearer so issued shall have been entered on the register of the local authority as the owner of the share of stock described in the certificate, such certificate shall be forthwith cancelled so as to be incapable of being re-issued to any person.

(3.) The foregoing charge of stamp duty shall not be applicable where a composition has been paid under the provisions of the section fifty-three of the Inland Revenue Act, 1880, for the stamp duty on transfers of the stock described in the certificate.

(4.) Every person and body of persons, whether corporate or unincorporate, by whom a "stock certificate to bearer" is issued without being duly stamped, shall forfeit the sum of fifty pounds.

47. On and after the first day of June one thousand eight hundred and eighty-one any stamp duties of one penny which may legally be denoted by adhesive stamps not appropriated by any word or words on the face of them to any particular description of instrument, may be denoted by adhesive penny postage stamps; and on and after that day postage duties may be paid by the use of penny adhesive stamps not appropriated by any word or words on the face of them to postage duty, or to any particular description of instrument.

48. The enactments described in the schedule to this Act are hereby repealed, to the extent in the said schedule mentioned: Provided that this repeal shall not affect the past operation of any enactment hereby repealed, or the liability for, or recovery of, any duties heretofore charged, or interfere with the institution or prosecution of any proceeding in respect of any offence committed, or any penalty or forfeiture incurred against or under any enactment hereby repealed.

THE SCHEDULE.

Session and Chapter.	Title of Act.	Extent of Repeal.
3 & 4 Vict. c. 96.	- An Act for the Regulation of the Duties of Postage.	Section twenty.
23 & 24 Vict. c. 129.	- An Act to grant Excise Duties on British Spirits and on Spirits imported from the Channel Islands.	Sections two and three.
30 & 31 Vict. c. 23.	- An Act to grant and alter certain Duties of Customs and Inland Revenue, and for other purposes relating thereto.	Sections five and six, and Schedule E.
32 & 33 Vict. c. 103.	- An Act to amend the Law relating to the warehousing of Wines and Spirits in Customs and Excise Warehouses, and for other purposes relating to Customs and Inland Revenue.	Sections three, four, five, nine, ten, and eleven.
39 & 40 Vict. c. 35.	- An Act for Consolidating the Duties of Customs.	The Schedule in part, namely, from "Beer and ale, viz.," to "exportation of Beer," and from "Spirits or Strong Waters" to "duty as such," and so far as it relates to the duty on essence of spruce.
39 & 40 Vict. c. 36.	- An Act to Consolidate the Customs Laws.	Sections forty-eight, one hundred and ten, one hundred and forty-three, one hundred and eighty-four, and one hundred and eighty-seven.

CHAP. 13.

Municipal Elections Amendment (Scotland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Words importing masculine gender to include females.*
3. *Roll of municipal electors, how to be made up.*
4. *Act to be construed with 31 & 32 Vict. c. 108.*
5. *Extent of Act.*
6. *Commencement of Act.*

An Act to amend the Municipal Elections Amendment (Scotland) Act, 1868.
(3rd June 1881.)

WHEREAS in the Act thirty-two and thirty-three Victoria, chapter fifty-five, it is provided that in that Act, and other Acts of Parliament therein recited, whenever words occur which import the masculine gender the same shall be held to include females for all purposes connected with and having reference to the right to vote in the election of town councillors in England :

And whereas it is expedient that in this respect the municipal franchise in Scotland shall be assimilated to that of England :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Municipal Elections Amendment (Scotland) Act, 1881.

2. In the Municipal Elections Amendment (Scotland) Act, 1868, and the various Acts therein recited prescribing the qualifications of voters at municipal elections in Scotland, whenever words occur which import the masculine gender the same shall be held for all purposes connected with and having reference to the right to vote in the election of town councillors, and also to nominate candidates for election to the said office, to include females who are not married and married females not living in family with their husbands ; but such females shall not be eligible for election as town councillors.

3. In any royal or parliamentary burgh in which the list or roll of persons entitled to vote in the election of the town council of such

burgh is made up in the way and manner directed by the Municipal Elections Amendment (Scotland) Act, 1868, or by the said Act, and any Local Act or Acts of Parliament, such list or roll shall continue to be made up as heretofore, so far as regards the persons entitled under these Acts to vote in the election of the town council of such burgh ; but in order that the females on whom the municipal franchise is by this Act conferred may be added to such list or roll, without necessitating the preparation of an entirely separate list or roll which shall include all the persons entitled to vote in the election of the town council of such burgh, it is hereby provided that the assessor appointed and acting under the Registration of Voters Acts in such burgh shall annually prepare a separate list of all females on whom the municipal franchise is by this Act conferred, and the same procedure shall be followed with reference to such separate list as is by the Registration of Voters Acts appointed to be followed with regard to the preparation, publication, completion, and otherwise of the register of parliamentary voters for burghs in Scotland ; and such separate list, when completed in terms of the Registration of Voters Acts, shall, along with the list or roll of persons made up in terms of the Municipal Elections Amendment (Scotland) Act, 1868, or of the said Act, and any Local Act or Acts of Parliament, form together the list or roll of persons entitled to vote in the election of the town council of such burgh.

4. This Act shall be construed as one with the said Municipal Elections Amendment (Scotland) Act, 1868.

5. This Act shall apply to Scotland only.

6. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-two.

CHAP. 14.

South Wales Bridges Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Title and extent of Act.*
 2. *Certain existing bridges may be accepted by county authority.*
 3. *Contribution out of county rates towards erecting bridges.*
 4. *Extension of power to borrow under 4 & 5 Vict. c. 49.*
 5. *Repair of roads over and adjoining bridges rebuilt.*
 6. *Interpretation.*
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An Act to enable County Authorities in South Wales to take over and contribute towards certain Bridges, and to remove doubts as to the liability to repair the Highways over and adjoining certain Bridges which have been rebuilt. (3rd June 1881.)

WHEREAS Part I. of the Highways and Locomotives (Amendment) Act, 1878, does not, except as to the twenty-seventh section thereof, apply to any county to which the Act passed in a session of Parliament holden in the twenty-third and twenty-fourth years of the reign of Her present Majesty, intituled "An Act for the better management and "control of the highways in South Wales," extends:

And whereas it is expedient that powers similar to those contained in sections twenty-one and twenty-two of the first-mentioned Act, and also in section two of the County Bridges Loans Extension Act, 1880, for taking over and contributing towards certain bridges and for borrowing money for the latter purpose, should be conferred upon the county authorities in South Wales:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the South Wales Bridges Act, 1881, and shall extend only to the several counties in South Wales; that is to say, the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan.

2. Any bridge erected before the passing of this Act in any county without such superintendence as is provided in section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, and which is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair.

3. The county authority may make such contribution as it sees fit out of the county rates towards the costs of any bridge to be hereafter erected, after the same has been

certified, in accordance with the provisions of section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one half of the cost of erecting such bridge.

4. Where the county authority see fit to make a contribution towards the cost of a bridge erected as in this Act mentioned, they may borrow on mortgage of the county rate all or any part of the amount of such contribution, in the same manner in every respect as if the amount to be borrowed had been the amount of an estimate made and approved in the manner mentioned in the Act passed in a session of Parliament holden in the fourth and fifth years of the reign of Her present Majesty, intituled "An Act to provide for repairing, "improving, and rebuilding county bridges," and all the powers, directions, and provisions of that Act shall extend and apply to the moneys borrowed under this Act; provided that the sum required for or towards any such contribution as aforesaid may be borrowed in exercise of the power hereby conferred, although the same shall not exceed one fourth of the amount of the ordinary annual assessment referred to in the said Act of the fourth and fifth years of the reign of Her present Majesty.

5. Where a bridge has been or shall be built by the county authority, or, with their consent, in substitution for another bridge which the county authority were liable to repair, the liability to repair the highway leading to, passing over, and next adjoining the bridge so substituted shall attach to the county authority, highway authority, person or persons who were liable to repair the highway leading to, passing over, and next adjoining the bridge previously existing, whether the substituted bridge is built on the same site or not.

6. In this Act—

"County" means any county, division, or liberty having a separate court of quarter sessions of the peace:

"County authority" means the justices of a county in general or quarter sessions assembled:

"Highway authority" includes a county roads board, highway board, and any other body of persons liable to repair the highways.

CHAP. 15.

Consolidated Fund (No. 3) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of 6,975,627l. out of the Consolidated Fund for the service of the year ending 31st March 1882.*
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of Six million nine hundred and seventy-five thousand six hundred and twenty-seven pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two.
(27th June 1881.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of

the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two the sum of six million nine hundred and seventy-five thousand six hundred and twenty-seven pounds.

2. The Commissioners of the Treasury may borrow from time to time on the credit of the said sum any sum or sums not exceeding in the whole the sum of six million nine hundred and seventy-five thousand six hundred and twenty-seven pounds, and shall repay the moneys so borrowed with interest not exceeding five pounds per centum per annum out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 3) Act, 1881.

CHAP. 16.

Land Tax Commissioners Names.

ABSTRACT OF THE ENACTMENTS.

1. *Persons named in a schedule signed by the Clerk of the House of Commons to be additional Commissioners.*

An Act to appoint additional Commissioners for executing the Acts for granting a Land Tax and other Rates and Taxes. (27th June 1881.)

WHEREAS an Act was passed in the seventh and eighth years of the reign of His Majesty King George the Fourth, intituled "An Act to appoint Commissioners for carrying into execution several Acts granting an aid to His Majesty by a land tax to be raised in Great Britain, and continuing to His Majesty certain duties on personal estates, offices, and pensions in England:"

And whereas several Acts have since been passed appointing additional Commissioners for carrying those Acts into execution:

And whereas it is expedient to appoint additional persons to put into execution the several Acts for granting an aid to Her Majesty by a land tax in Great Britain and several other Acts for continuing or granting to Her Majesty rates and taxes.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and

consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The several and respective persons named in a schedule signed by and deposited with the Clerk of the House of Commons shall and may be and are hereby empowered and authorised (being duly qualified) to put in execution the said Acts, and all the clauses, powers, matters, and things whatsoever therein contained, as Commissioners in and for the several and respective counties, shires, and places in England and Wales in the said schedule severally and respectively mentioned and expressed, as fully and effectually as if they had been named with the other Commissioners in the said recited Act passed in the seventh and eighth years of the reign of His Majesty King George the Fourth; and on the passing of this Act the said schedule shall be printed in the London Gazette, which shall be sufficient evidence of such schedule for all purposes whatsoever.

CHAP. 17.

Tramways (Ireland) Amendment Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Limitation of Act.*
3. *Interpretation of terms.*
4. *Alteration of certain tolls in 23 & 24 Vict. c. 152., Sch. B.*
5. *Regulations as to speed of locomotives on tramways.*
6. *Alterations of 24 & 25 Vict. c. 102. s. 9.*
7. *Alterations of 23 & 24 Vict. c. 152. s. 6. and 34 & 35 Vict. c. 114. s. 4.*
8. *Tramway Acts and this Act to be read as one.*

An Act to amend the Tramways (Ireland) Acts, 1860, 1861, and 1871. (27th June 1881.)

WHEREAS by the Tramways (Ireland) Act, 1860, (herein-after called "the Act of 1860,") the Tramways (Ireland) Amendment Act, 1861, (herein-after called "the Act of 1861,") and by a subsequent Act passed in the session of Parliament held in the year 1871, and to be read as one with the foregoing Acts, and intituled "An Act to amend the Tramways (Ireland) Acts, 1860 and 1861," (herein-after called "the Act of 1871,") (and which three said Acts of 1860, 1861, and 1871 are together herein-after referred to as "the Tramway

Acts,") powers were conferred whereby persons desirous of promoting the construction of tramways in Ireland were enabled to make use, under proper control, of the public roads, post roads, and common highways, and certain lands contiguous thereto, subject to the provisions in the Tramway Acts contained:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Tramways (Ireland) Amendment Act, 1881

2. This Act shall only extend to Ireland.

3. In this Act—

The expression "the Lord Lieutenant in Council" means the Lord Lieutenant or other chief governor or governors of Ireland for the time being, acting by and with the advice of Her Majesty's Privy Council in Ireland.

4. From and after the passing of this Act, Schedule B. to the Act of 1860 shall be read and have effect as if under the head of "goods" in class 1 in lieu of the words "one penny" the words "three pence" had been inserted, and as if in paragraph six of the same schedule in relation to the maximum rate of charge in lieu of the words "one penny halfpenny" the words "three pence" had been inserted.

5. Subject to the rules and regulations contained in section three of the Act of 1871, the Lord Lieutenant in Council, the grand jury of any county, or other authority empowered under the Tramway Acts to grant permission to construct a tramway or tramways, may permit the owners of any such tramway or tramways, or their servants duly authorised in that behalf, to drive any locomotive worked by steam along any such tramway at a speed not greater than ten miles an hour, or through any town or village at a speed not greater than six miles an hour, and where such permission has been obtained the provisions in section four of the Act of 1871 shall be deemed not to apply.

6. From and after the passing of this Act in any case in which a petition of appeal is presented to the Lord Lieutenant in Council against any undertaking which shall have been approved by the grand jury and the said appeal is not proceeded with it shall be considered as having entirely failed, and it shall not be necessary for the promoters to get the said order confirmed by Act of Parliament as required by the ninth section of the Tramways (Ireland) Amendment Act of 1861.

7. Where any tramway is proposed to be laid alongside any public road it shall not be necessary to construct as required by the sixth section of the Tramways (Ireland) Act, 1860, and of the Tramways (Ireland) Amendment Act of 1871 the same on a level with the said public road, provided that a clear roadway of eighteen feet is left between the said tramway and the opposite footpath, or roadside boundary in case there is no footpath, and that, in case any footpath be interfered with, the promoters make another footpath in place of that interfered with; provided also, that no such deviation from the ordinary level of the road shall be permitted unless authorised by the Lord Lieutenant in Council and by the grand jury of the county or other authority empowered under the Tramway Acts to grant permission for the construction of such tramway.

8. The Tramways Acts (as amended by this Act) and this Act shall be read together and construed as one Act.

CHAP. 18.

Petty Sessions Clerks (Ireland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Salaries of clerks of petty sessions in Ireland not to depend on amount of fines or petty sessions stamps.*
2. *Provisions for securing Petty Sessions Clerks Fund from variation.*
3. *Sureties for petty sessions clerks.*
4. *Definition clause.*
5. *Superannuation.*
6. *Short title.*

An Act to amend the law with respect to the payment of Clerks of Petty Sessions in Ireland. (27th June 1881.)

WHEREAS it is inexpedient that the salary of petty sessions clerks should be varied accord-

ing to the amount of fines levied by the courts of which they are officers and the stamps upon proceedings in such court:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament

assembled, and by the authority of the same, as follows:

1. The salaries and emoluments of the petty sessions clerks in Ireland shall not after the passing of this Act be raised or lowered on account of the amount of fines levied in the court of which they are clerks, or on account of the amount of petty sessions stamps used therein, but may be raised on account of the length of service, or for merit, or for new duties attached to the office, and shall not be liable to be reduced below the amount of the salary and emoluments at which the same were fixed at the time of his appointment, or any time during his tenure of office: Provided always, that it shall be lawful to reduce the salary for the office of clerk of any petty sessions court when the office is vacant.

2. To secure the Petty Sessions Clerks Fund on which the salaries and retiring allowances are charged from variation, it shall be lawful for the registrar of petty sessions clerks to deduct from any sum or sums payable by him to local authorities in Ireland such sum or sums as the Lord Lieutenant or Lords Justices or other Chief Governor or Chief Governors of Ireland shall for any calendar year by any order or orders determine, and to add the amount of such deduction to the Petty Sessions Clerks Fund.

3. It shall not be necessary for a petty sessions clerk to enter into a new bond with sureties on each occasion of increase in his salary, nor, except when by reason of the death or insolvency of his sureties or for other sufficient reason the Lord Lieutenant may consider such to be necessary, shall a new bond be required, but the original bond as against the original sureties shall remain of full force and effect notwithstanding such increase of salary.

4. "Local authorities" shall mean the treasurers of counties and treasurers of boroughs to whom the surplus moneys arising from the sale of licences are payable under the Dogs Regulation (Ireland) Act, 1865, and any Act amending the same.

"Petty sessions clerks" shall include the registrar of petty sessions clerks and his clerks.

5. The superannuation or retiring allowance of petty sessions clerks retiring from office through age or infirmity shall be estimated upon the salary of the office at the time of retiring, and shall be chargeable on the petty sessions clerks fund.

6. This Act may be cited as the Petty Sessions Clerks (Ireland) Act, 1881.

CHAP. 19.

Newspapers.

ABSTRACT OF THE ENACTMENTS.

1. *For purposes of Act Channel Islands and Isle of Man part of United Kingdom.*
2. *Repeal of part of sect. 6 of 33 & 34 Vict. c. 79.*

An Act for further regulating the Transmission of Newspapers.

(18th July 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. For the purposes of this Act the Channel

Islands and the Isle of Man shall be deemed parts of the United Kingdom.

2. From and after the thirtieth day of September one thousand eight hundred and eighty-one, so much of section six of the Post Office Act, 1870, as requires that a publication, in order to be a newspaper for the purposes of that Act, shall be printed on a sheet or sheets unstitched, shall be repealed, but such repeal shall not extend to a supplement to a newspaper.

CHAP. 20.

Post Office (Land) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short titles.*
2. *Commencement of Act.*

Acquisition of Land.

3. *Power of Postmaster-General for purchase of land.*
4. *Power to sell, exchange, or lease land purchased.*

Execution of Instruments.

5. *Exemption of Postmaster-General from stamp duty.*
6. *Power of deputy of Postmaster-General to give notice, or make claim, distress, &c.*
7. *Execution of instrument under seal of Postmaster-General.*

Supplemental.

8. *Definitions.*

Application to Scotland and Ireland.

9. *Application to Scotland.*
10. *Application to Ireland.*

SCHEDULE.

An Act to amend the Law with respect to the Acquisition of Land and the Execution of Instruments for the purposes of the Post Office.

(18th July 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Post Office (Land) Act, 1881.

The Acts set forth in the Schedule to this Act are in this Act referred to and may be cited by the short title in the third column of that schedule mentioned, and the said Acts, together with this Act, may be cited together as the Post Office (Management) Acts, 1837 to 1881.

This Act shall be deemed to be a Post Office Act within the meaning of the Post Office (Offences) Act, 1837.

2. This Act shall come into operation on the first day of September one thousand eight hundred and eighty-one (which day is in this Act referred to as the commencement of this Act).

Acquisition of Land.

3. Whereas by the Post Office Duties Act, 1840, the Postmaster-General is constituted a body corporate for the purpose of holding and taking conveyances and leases of lands for the service of the Post Office, and it is expedient to give further powers for the acquisition of such lands: Be it therefore enacted as follows:

(1.) The Postmaster-General, with the consent of the Treasury, may purchase land for the purpose of the Post Office, and shall take and hold such land on behalf of Her Majesty for the service of the Post Office; and for the purposes of this Act the expression "land" shall include any right or easement in, over, or in respect of land.

(2.) With respect to any such purchase of land the following provisions shall have effect; (that is to say,)

(a.) The Lands Clauses Consolidation Act, 1845, and the Acts amending the same shall be incorporated with this Act, except the provisions relating to access to the special Act, and in construing those Acts for the purposes of this section "the special Act" shall be construed to mean this Act, and "the promoters of the undertaking" shall be construed to mean the Postmaster-General, and "land" shall be construed to have the same meaning as is given to it by this Act.

- (b.) The bond required by section eighty-five of the Land Clauses Consolidation Act, 1845, shall be under the seal of the Postmaster-General, and shall be sufficient without sureties.
- (c.) The provisions of the said incorporated Acts with respect to the purchase of land compulsorily shall not be put in force until the sanction of Parliament has been obtained in manner in this Act mentioned.
- (d.) Three months at the least before an application is made to Parliament for sanction to the compulsory purchase of land under this Act, the Postmaster-General with the consent of the Treasury shall serve, in manner provided by the said incorporated Acts, a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any land intended to be so purchased, describing the land intended to be taken, and in general terms the purposes to which it is to be applied, and stating the intention of the Treasury to obtain the sanction of Parliament to the purchase thereof, and inquiring whether the person so served assents or dissents to the taking of his land, and requesting him to forward to the Treasury any objections he may have to his land being taken.
- (e.) The Treasury shall, at some time after the service of such notice, make a local inquiry by a competent officer into the objections made by any persons whose land is required to be taken, and by other persons, if any, interested in the subject matter of such inquiry.
- (f.) The Treasury, if satisfied after such inquiry has been made that the land ought to be taken, may submit a Bill to Parliament containing provisions authorising the Postmaster-General to take such land, and such Bill shall in all respects be deemed to be a Public Bill, and, if passed into an Act, to have conveyed the sanction of Parliament to the purchase compulsorily of the land therein mentioned or referred to, and the period for such compulsory purchase shall be three years after the passing of such Act: Provided that if while such Bill is pending in either House of Parliament a petition is presented against anything comprised therein, the Bill may be referred to a Select Committee, and the petitioner shall be

allowed to appear and oppose as in the case of Private Bills.

(3.) The Chancellor and Council for the time being of the Duchy of Lancaster may, if they think fit, from time to time contract and agree with the Postmaster-General for the sale of, and may absolutely make sale and dispose of, for such sum or sums of money as to the said Chancellor and Council appear sufficient consideration for the same, any land belonging to Her Majesty, her heirs or successors, in right of the said Duchy, which, for the purpose of the Post Office, the Postmaster-General may from time to time deem it expedient to purchase with the consent of the Treasury, and such land may be granted and assured to the Postmaster-General, and the said moneys shall be paid and dealt with as if the said land had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

4. All the provisions of the Post Office Lands Act, 1863, with respect to the sale, exchange, leasing, or surrender of any lands vested in the Postmaster-General shall apply to any land purchased by the Postmaster-General under the powers of this Act.

Execution of Instruments.

5. Every deed, instrument, receipt, or document made or executed for the purpose of the Post Office by, to, or with Her Majesty or any officer of the Post Office, shall be exempt from any stamp duty imposed by any Act, past or future, except where such duty is declared by the deed, instrument, receipt, or document, or by some memorandum endorsed thereon, to be payable by some person other than the Postmaster-General, and except so far as any future Act specifically charges the same.

Section twenty-two of the Telegraph Act, 1869, except so far as it amends section five of the Telegraph Act, 1868, is hereby repealed, without prejudice nevertheless to anything already done in pursuance of the said section.

6. Any person having authority in that behalf, either general or special, under the seal of the Postmaster-General, may, on behalf of the Postmaster-General, give any notice and make any claim, demand, entry, or distress which the Postmaster-General in his corporate capacity or otherwise might give or make, and every such notice, claim, demand, entry, and distress shall be deemed to have been given and made by the Postmaster-General on behalf of Her Majesty.

7. An instrument under the seal of the Postmaster-General may be signed by any of the secretaries to the Post Office, and shall be

as valid as if the same were signed by the Postmaster-General.

Any instrument purporting to be under the seal of the Postmaster-General, and to be signed by the Postmaster-General or one of the secretaries to the Post Office, shall, until the contrary is proved, be deemed to have been so sealed and signed without proof of the official character of the person appearing to have signed the same.

Supplemental.

8. In this Act, unless the context otherwise requires,—

The expression “the Treasury” means the Commissioners of Her Majesty’s Treasury.

The expression “the purpose of the Post Office” means any purpose of any of the Post Office Acts or of any Acts for the time being in force relating to Post Office money orders, Post Office telegraphs, or Post Office savings banks, and includes any purpose relating to or in connexion with the execution of the duties for the time being undertaken by the Postmaster-General or any of his officers.

Other expressions shall have the same meaning as in the Post Office (Offences) Act, 1837.

Application to Scotland and Ireland.

9. In the application of this Act to Scotland the expression “Lands Clauses Consolidation Act, 1845,” shall mean the Lands Clauses Consolidation (Scotland) Act, 1845, and the reference to the bond required by section eighty-five of the Lands Clauses Consolidation Act, 1845, shall be deemed to refer to the bond required by section eighty-four of the Lands Clauses Consolidation (Scotland) Act, 1845.

10. In the application of this Act to Ireland the expression “Lands Clauses Consolidation Act, 1845, and the Acts amending the same,” shall mean the Lands Clauses Consolidation Act, 1845, as amended by the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railway Traverse Act.

SCHEDULE.

Session and Chapter.	Title.	Short Title.
7 Will. 4. & 1 Vict. c. 33.	An Act for the management of the Post Office.	The Post Office (Management) Act, 1837.
7 Will. 4. & 1 Vict. c. 36.	An Act for consolidating the laws relative to offences against the Post Office of the United Kingdom, and for regulating the judicial administration of the Post Office laws, and for explaining certain terms and expressions employed in those laws.	The Post Office (Offences) Act, 1837.
12 & 13 Vict. c. 66.	- An Act for enabling colonial legislatures to establish inland posts.	The Colonial Inland Post Office Act, 1849.
26 & 27 Vict. c. 43.	- An Act to enable Her Majesty’s Postmaster-General to sell and otherwise dispose of land.	The Post Office Lands Act, 1863.

CHAP. 21.

Married Women's Property (Scotland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Wife married after date of Act to have separate estate in moveables. Income. Liability to arrestment. Bankruptcy. Contracts of marriage.*
2. *Rents of heritable property to be separate estate in wife.*
3. *How far Act to apply to marriages contracted before its passing.*
4. *In case of marriages contracted before Act parties may come under its provisions by deed.*
5. *Husband's consent dispensed with in certain cases.*
6. *Right given to husband in wife's moveable succession.*
7. *Children of women dying domiciled in Scotland to have right of legitim, &c.*
8. *Exempting contracts and certain legal rights from operation of Act.*
9. *Short title.*

SCHEDULE.

**An Act for the Amendment of the Law
regarding Property of Married Women
in Scotland. (18th July 1881.)**

WHEREAS an Act was passed in the fortieth year of the reign of Her present Majesty, entitled the Married Women's Property (Scotland) Act, and it is just and expedient to protect, to the further extent herein-after provided for, the property of married women in Scotland :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. (1.) Where a marriage is contracted after the passing of this Act, and the husband shall, at the time of the marriage, have his domicile in Scotland, the whole moveable or personal estate of the wife, whether acquired before or during the marriage, shall, by operation of law, be vested in the wife as her separate estate, and shall not be subject to the *ius mariti*.

(2.) Any income of such estate shall be payable to the wife on her individual receipt or to her order, and to this extent the husband's right of administration shall be excluded ; but the wife shall not be entitled to assign the prospective income thereof, or, unless with the husband's consent, to dispose of such estate.

(3.) Except as herein-after provided, the wife's moveable estate shall not be subject to arrestment, or other diligence of the law, for the husband's debts, provided that the said estate (except such corporeal moveables as are usually possessed without a written or documentary title) is invested, placed, or secured in the name of the wife herself, or in such

terms as shall clearly distinguish the same from the estate of the husband.

(4.) Any money, or other estate of the wife, lent or entrusted to the husband, or immixed with his funds, shall be treated as assets of the husband's estate in bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the value of such money or other estate after but not before the claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

(5.) Nothing herein contained shall exclude or abridge the power of settlement by antenuptial contract of marriage.

2. Where a marriage is contracted after the passing of this Act the rents and produce of heritable property in Scotland belonging to the wife shall no longer be subject to the *ius mariti* and right of administration of the husband.

3. In the case of marriages which have taken place before the passing of this Act :

(1.) The provisions of this Act shall not apply where the husband shall have, before the passing thereof, by irrevocable deed or deeds, made a reasonable provision for his wife in the event of her surviving him :

(2.) In other cases the provisions of this Act shall not apply except that the *ius mariti* and right of administration shall be excluded to the extent respectively prescribed by the preceding sections from all estate, moveable or heritable, and income thereof, to which the wife may acquire right after the passing of the Act.

4. It shall be competent to all persons married before the passing of this Act to

declare by mutual deed that the wife's whole estate, including such as may have previously come to the husband in right of his wife, shall be regulated by this Act, and upon such deed being registered in the register of deeds at Edinburgh or in the Sheriff Court register of the county or counties in which the parties reside, and being advertised in terms of the schedule in the Edinburgh Gazette and three times in two local newspapers circulating in such county or counties, the said estate shall be vested in her as herein-before provided, and subject to the provisions of this Act; provided that the said estate (except such corporeal moveables as are usually possessed without a written or documentary title) is invested, placed, or secured, in the name of the wife herself, or in such terms as shall clearly distinguish the same from the estate of the husband; but no such deed shall be of any effect as against any debt or obligation contracted by the husband prior to the date of the deed being so advertised and registered.

5. Where a wife is deserted by her husband, or is living apart from him with his consent, a judge of the Court of Session or Sheriff Court, on petition addressed to the court, may dispense with the husband's consent to any deed relating to her estate.

6. After the passing of this Act the husband of any woman who may die domiciled in

Scotland shall take by operation of law the same share and interest in her moveable estate which is taken by a widow in her deceased husband's moveable estate, according to the law and practice of Scotland, and subject always to the same rules of law in relation to the nature and amount of such share and interest, and the exclusion, discharge, or satisfaction thereof, as the case may be.

7. After the passing of this Act the children of any woman who may die domiciled in Scotland shall have the same right of legitim in regard to her moveable estate which they have according to the law and practice of Scotland in regard to the moveable estate of their deceased father, subject always to the same rules of law in relation to the character and extent of the said right, and to the exclusion, discharge, or satisfaction thereof, as the case may be.

8. This Act shall not affect any contracts made or to be made between married persons before or during marriage, or the law relating to such contracts, or the law relating to donations between married persons, or to a wife's non-liability to diligence against her person, or any of the rights of married women under the recited Act.

9. This Act may be cited as the Married Women's Property (Scotland) Act, 1881.

SCHEDULE.

FORM OF NOTICE PRESCRIBED BY SECTION 4.

Notice is hereby given that on the _____ day of _____
 [designation] and E.F. his wife has been registered in the Register of
 of the Married Women's Property (Scotland) Act, 1881.

a deed by A.B. of C.
 in terms

CHAP. 22.

Bankruptcy and Cessio (Scotland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extent of Act.*
3. *Commencement of Act.*
4. *Interpretation of terms.*
5. *Discharge of debtor in Cessio.*
6. *Restriction on right to discharge in bankruptcy.*
7. *Restriction on right to discharge in Cessio.*

8. *Discharge of trustee in Cessio.*
9. *Provisions for failure of debtor to appear.*
10. *Sheriffs may issue warrants in proceedings under 19 & 20 Vict. c. 79. ss. 88, 90, and 91.*
11. *If estate large, &c. sheriff may dismiss Cessio.*
12. *Shortening inducives in Cessio proceedings.*
13. *Effect of s. 12. of 43 & 44 Vict. c. 34.*
14. *Construction of Act.*

An Act to amend the Bankruptcy Acts and Cessio Acts with respect to the discharge of Bankrupt Debtors in Scotland, and in certain other respects.
(18th July 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Bankruptcy and Cessio (Scotland) Act, 1881.

2. This Act shall extend to Scotland only.

3. This Act shall commence to have effect on the first day of January one thousand eight hundred and eighty-two, which date is hereinafter referred to as the commencement of this Act.

4. The expression "the Bankruptcy Acts" means the Bankruptcy (Scotland) Act, 1856, and any Act amending the same.

The expression "the Cessio Acts" shall include the Act passed in the session of the sixth and seventh years of the reign of His Majesty King William the Fourth, chapter fifty-six, the Sheriff Court (Scotland) Act, 1876, section twenty-six, the Debtors (Scotland) Act, 1880, this Act, and any Act amending the same.

The expression "decree Cessio bonorum" shall include a decree decerning a debtor to execute a disposition omnium bonorum in terms of the Debtors (Scotland) Act, 1880.

The word "sheriff" in this Act and in the Debtors (Scotland) Act, 1880, includes sheriff substitute.

5. A debtor with respect to whom decree of Cessio bonorum has been pronounced shall be entitled on the expiration of six months from the date of such decree to apply to the sheriff to be finally discharged of all debts contracted by him before the date of such decree; and the provisions of the one hundred and forty-sixth section of the Bankruptcy (Scotland) Act, 1856,

with regard to the conditions on which a bankrupt shall be entitled to obtain his discharge on the expiration of six months, twelve months, eighteen months, and two years respectively from the date of sequestration shall, subject to the qualifications herein-after contained, apply to debtors with respect to whom decree of cessio bonorum has been pronounced: Provided, that in applying the provisions of the said section, the date of the decree of cessio bonorum shall be substituted for the date of awarding sequestration; and that it shall not be necessary to convene a meeting of creditors with reference to such discharge, but the consents required shall be given in writing and produced to the sheriff in such application for discharge.

A deliverance by the sheriff granting, postponing, or refusing a discharge under this section shall be final and not subject to review.

6. Notwithstanding anything contained in the Bankruptcy Acts, the following provisions shall have effect with respect to bankrupts undischarged at the commencement of this Act, and to bankrupts whose estates may be there-after sequestrated; that is to say,

(1.) A bankrupt shall not at any time be entitled to be discharged of his debts, unless it is proved to the Lord Ordinary or the sheriff, as the case may be, that one of the following conditions has been fulfilled:

(a.) That a dividend or composition of not less than five shillings in the pound has been paid out of the estate of the bankrupt, or that security for payment thereof has been found to the satisfaction of the creditors; or

(b.) That the failure to pay five shillings in the pound, as aforesaid, has in the opinion of the Lord Ordinary or the sheriff, as the case may be, arisen from circumstances for which the bankrupt cannot justly be held responsible:

(2.) In order to determine whether either of the foresaid conditions has been

fulfilled, the Lord Ordinary or the sheriff, as the case may be, shall have power to require the bankrupt to submit such evidence as he may think necessary, in addition to the declarations or oaths, as the case may be, made by the bankrupt under sections one hundred and forty and one hundred and forty-seven of the Bankruptcy (Scotland) Act, 1856, and the report made by the trustee under section one hundred and forty-six of the said Act and to allow any objecting creditor or creditors such proof as he may think right:

(3.) Any deliverance of the Lord Ordinary or sheriff, as the case may be, under this section shall be subject to appeal in the manner provided in sections one hundred and seventy-one and one hundred and seventy of the Bankruptcy (Scotland) Act, 1856: Provided always, that the judgment of the Inner House of the Court of Session on any such appeal shall be final and not subject to review:

(4.) In the event of a discharge being refused under the provisions of this section the bankrupt shall at any time, if his estate shall yield or he shall pay to his creditors such additional sum as will, with the dividend or composition previously paid out of his estate during the sequestration, make up five shillings in the pound, be entitled to apply for and obtain his discharge in the same manner as if a dividend of five shillings in the pound had originally been paid out of his estate.

7. Notwithstanding anything contained in the Cessio Acts, the following provisions shall have effect in the case of debtors with respect to whom decree of Cessio bonorum has been pronounced; that is to say,

(1.) A debtor shall not be entitled to be discharged of his debts unless it is proved to the sheriff that one of the following conditions has been fulfilled:

(a.) That a dividend of five shillings in the pound has been paid out of the estate of the debtor, or that security for payment thereof has been found to the satisfaction of the creditors; or

(b.) That the failure to pay five shillings in the pound as aforesaid has in the opinion

of the sheriff arisen from circumstances for which the debtor cannot justly be held responsible:

(2.) In order to determine whether either of the foreshaid conditions has been fulfilled the sheriff shall have power to require the debtor to submit such evidence as he may think necessary, and to allow any objecting creditor or creditors such proof as he may think right:

(3.) In the event of a discharge being refused under the provisions of this section, the debtor shall at any time, if his estate shall yield or he shall pay to his creditors such additional sum as will, with the dividend previously paid out of his estate during the said proceedings, make up five shillings in the pound, be entitled to apply for and obtain his discharge in the same manner as if a dividend of five shillings in the pound had originally been paid out of his estate.

8. After a final division of the funds the trustee, in a process of cessio, may apply to the accountant in bankruptcy for a certificate that he is entitled to his discharge, and shall lay before him the sederunt book and accounts, with a list of unclaimed dividends, and the accountant may, if he thinks proper, order intimation to be made to the creditors, and shall, if he is satisfied that the trustee has complied with the provisions of the one hundred and forty-seventh section of the Bankruptcy (Scotland) Act, 1856, and is otherwise entitled to be discharged, and upon payment of any unclaimed dividends into the account of unclaimed dividends kept in the name of the accountant, grant to the trustee a certificate under his hand to that effect, and such certificate shall have to all intents and purposes the effect of a decree of exoneration and discharge by a court of competent jurisdiction.

9. If the debtor fail to appear in obedience to the citation under a process of Cessio bonorum at any meeting to which he has been cited, and, if the sheriff shall be satisfied that such failure is wilful, he may in the debtor's absence pronounce decree of Cessio bonorum.

10. In any proceedings under the Cessio Acts it shall be competent for the sheriff, for the purpose of securing the attendance and examination of the debtor, or of any person who can give information relative to the debtor's estate, to exercise all the powers and to grant the warrants and commissions which

in processes of sequestration he is empowered to exercise or to grant under the eighty-eighth, ninetyeth, and ninety-first sections of the Bankruptcy (Scotland) Act, 1856.

11. If in any proceedings under the Cessio Acts, where the liabilities of the debtor exceed the sum of two hundred pounds, it shall appear to the sheriff that it is expedient, having regard to the value of the debtor's estate and the whole circumstances of the case, that the distribution of the estate should take place under the provisions of the Bankruptcy Acts, he shall have power forthwith to award sequestration of the estates which then belong or shall thereafter belong to the debtor before the date of the discharge and declare the estates to belong to the creditors for the purposes of the Bankruptcy Acts; and thereupon the provisions of the said Acts shall apply as if sequestration had been awarded upon a petition for sequestration in terms of section twenty-nine of the Bankruptcy (Scotland) Act, 1856.

The sheriff shall have power to direct that

the expenses *bonâ fide* incurred by a creditor in any proceedings under the Cessio Acts superseded by the awarding of sequestration shall be paid by the trustee in the sequestration out of the readiest funds of the bankrupt.

12. Notwithstanding any law or usage to the contrary, it shall be lawful for the sheriff to appoint any diet of comparance or any meeting or proceeding under the Cessio Acts to be held on an *inducias* of any number of days not being less than eight.

This provision shall not be held to limit any power now possessed by the sheriff.

13. In section twelve of the Debtors (Scotland) Act, 1880, the word "dwelling-house" shall be held to include shop, counting-house, warehouse, or other premises.

14. This Act shall be read and construed together with the Debtors (Scotland) Act, 1880.

CHAP. 23.

Court of Bankruptcy (Ireland) Officers and Clerks Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Reconstitution of official staff.*
3. *Salaries.*
4. *Mode of filling future vacancies in junior clerkships.*

An Act to amend the Law relating to the Official Staff of the Court of Bankruptcy in Ireland.

(18th July 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Court of Bankruptcy (Ireland) Officers and Clerks Act, 1881.

2. From and after the passing of this Act, the thirty-eighth section of the Irish Bankrupt and Insolvent Act, 1857, shall be and is hereby

repealed. But neither this repeal nor any other enactment contained in this Act shall be construed to lessen or affect any right to which any officer of the Court of Bankruptcy in Ireland, who is in office at the passing of this Act, may be entitled; and all such rights shall continue and exist as if this Act had not been passed. Subject to such rights, the official staff of the Court of Bankruptcy in Ireland shall, notwithstanding any enactment to the contrary, consist of such officers, clerks, and persons holding subordinate situations, with such titles and designations respectively, as the judges of the Court may, by general order made with the approval of the Lord High Chancellor of Ireland and the concurrence of the Commissioners of Her Majesty's Treasury, from time to time direct: Provided, however, that no vacancy among such officers, clerks, or persons shall be filled up without the

concurrence of the Commissioners of the Treasury.

3. Each such officer, clerk, and person shall be paid such salary, out of money to be provided by Parliament, as the judges of the Court, with the approval of the said Lord High Chancellor and the concurrence of the Com-

missioners of the Treasury, may from time to time determine.

4. All junior clerkships in the said Court shall be filled up by open competition, but this provision shall not apply to any person holding any office or clerkship in the Court at the time of the passing of this Act.

CHAP. 24.

Summary Jurisdiction (Process) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extent of Act.*
3. *Commencement of Act.*
4. *Service of process of English court in Scotland and of Scotch court in England.*
5. *Provision as to execution of process.*
6. *Provision as to bastardy proceedings in England and Scotland.*
7. *Saving.*
8. *Definitions.*

SCHEDULE.

An Act to amend the Law respecting the Service of Process of Courts of Summary Jurisdiction in England and Scotland. (18th July 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Summary Jurisdiction (Process) Act, 1881.

This Act shall be deemed to be included in the expressions " Summary Jurisdiction Acts " and " Summary Jurisdiction (English) Acts."

2. This Act shall not apply to Ireland.

3. This Act shall come into operation on the first day of October one thousand eight hundred and eighty-one (which day is in this Act referred to as the commencement of this Act).

4. Subject to the provisions of this Act, any process issued under the Summary Jurisdiction Acts may, if issued by a court of summary jurisdiction in England and endorsed by a court of summary jurisdiction in Scotland, or

issued by a court of summary jurisdiction in Scotland and endorsed by a court of summary jurisdiction in England, be served and executed within the jurisdiction of the endorsing court in like manner as it may be served and executed within the jurisdiction of the issuing court, and that by an officer either of the issuing or of the endorsing court.

For the purposes of this Act—

- (1.) Any process may be issued and endorsed under the hand of any such person as is declared by this Act to be a court of summary jurisdiction, and may be endorsed upon proof alone of the handwriting of the person issuing it, and such proof may be either on oath or by such solemn declaration as is mentioned in section forty-one of the Summary Jurisdiction Act, 1879, or by any like declaration taken in Scotland before a sheriff, justice of the peace, or other magistrate having the authority of a justice of the peace. Such indorsement may be in the form contained in the schedule to this Act annexed, or in a form to the like effect :
- (2.) Where any process requiring the appearance of a person to answer any information or complaint has been served in pursuance of this section, the court, before issuing a warrant for the apprehension of such person for

failure so to appear, shall be satisfied on oath that there is sufficient *prima facie* evidence in support of such information or complaint:

(3.) If the process is to procure the attendance of a witness, the court issuing the process shall be satisfied on oath of the probability that the evidence of such witness will be material, and that the witness will not appear voluntarily without such process, and the witness shall not be subject to any liability for not obeying the process, unless a reasonable amount for his expenses has been paid or tendered to him:

(4.) This Act shall not apply to any process requiring the appearance of a person to answer a complaint if issued by an English court of summary jurisdiction for the recovery of a sum of money which is a civil debt within the meaning of the Summary Jurisdiction Act, 1879, or if issued by a Scotch court in a case which falls within the definition of "civil jurisdiction" contained in the Summary Procedure Act, 1864.

5. Where a person is apprehended under any process executed in pursuance of this Act, such person shall be forthwith taken to some place within the jurisdiction of the court issuing the process, and be there dealt with as if he had been there apprehended.

A warrant of distress issued in England when endorsed in pursuance of this Act shall be executed in Scotland as if it were a Scotch warrant of poinding and sale, and a Scotch warrant of poinding and sale when endorsed in pursuance of this Act shall be executed in England as if it were an English warrant of distress, and the enactments relating to the said warrants respectively shall apply accordingly, except that any account of the costs and charges in connexion with the execution, or of the money levied thereby or otherwise relating to the execution, shall be made, and any money raised by the execution shall be dealt with in like manner as if the warrant had been executed within the jurisdiction of the court issuing the warrant.

6. A court of summary jurisdiction in England and a sheriff court in Scotland shall respectively have jurisdiction by order or decree to adjudge a person within the jurisdiction of the court to pay for the maintenance and education of a bastard child of which he is the putative father, and for the expenses incidental to the birth of such child, and for the

funeral expenses of such child, notwithstanding that such person ordinarily resides, or the child has been born, or the mother of it ordinarily resides, where the court is English, in Scotland, or where the court is Scotch, in England, in like manner as the court has jurisdiction in any other case.

Any process issued in England or Scotland to enforce obedience to such order or decree may be endorsed and executed in Scotland and England respectively in manner provided by this Act with respect to process of a court of summary jurisdiction.

Any bastardy order of a court of summary jurisdiction in England may be registered in the books of a sheriff court in Scotland, and thereupon a warrant of arrestment may be issued in like manner as if such order were a decree of the said sheriff court.

7. This Act shall be in addition to and not in derogation of any power existing under any other Act relating to the execution of any warrant or other process in England and Scotland respectively.

8. In this Act, unless the context otherwise requires,—

The expression "process" includes any summons or warrant of citation to appear either to answer any information or complaint, or as a witness; also any warrant of commitment, any warrant of imprisonment, any warrant of distress, any warrant of poinding and sale, also any order or minute of a court of summary jurisdiction or copy of such order or minute, also an extract decree, and any other document or process, other than a warrant of arrestment, required for any purpose connected with a court of summary jurisdiction to be served or executed.

The expression "Summary Jurisdiction Acts" as regards England has the same meaning as in the Summary Jurisdiction Act, 1879, and as regards Scotland, means the Summary Procedure Act, 1864, and any Act, past or future, amending that Act.

The expression "sheriff" shall include sheriff substitute.

The expression "court of summary jurisdiction" means any justice of the peace, also any officer or other magistrate having the authority in England or Scotland of a justice of the peace, also in Scotland the sheriff.

The expression "officer of a court of summary jurisdiction" means the constable, officer, or person to whom any process issued by the court is directed, or who is by law required or authorised to serve or execute any process issued by the court.



SCHEDULE.

INDORSEMENT IN BACKING A PROCESS.

WHEREAS proof hath this day been made before me, one of Her Majesty's justices of the peace [sheriff or other magistrate] for the [county or burgh] of , that the name of A.B. to the within warrant [or summons or order or minute, or copy of order or minute or other documents] subscribed is of the handwriting of the justice of the peace [sheriff or other magistrate] within mentioned, I do therefore hereby authorise O.D. who bringeth to me this warrant [or summons or order or minute, or copy of order or minute or other document,] and all other persons by whom the same may be lawfully served [or executed], and also all constables and other peace officers of the said [county or burgh] of to serve and execute the same within the said last-mentioned [county or burgh].

Given under my hand this

day of

18 .

CHAP. 25.

Incumbents of Benefices Loans Extension Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Power to Governors of Queen Anne's Bounty to extend period for repayment of loans, &c.*
2. *Limitation of duration of discretionary powers.*
3. *Short title.*

SCHEDULE.

An Act to extend for a period not exceeding Three Years the term fixed for the Repayment of Loans granted by the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy to Incumbents of Benefices.

(11th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Governors of the Bounty of Queen Anne for the Augmentation of the maintenance of the Poor Clergy (herein-after called the "Governors") may by resolution passed by them at a board meeting, from time to time extend for a period not exceeding three years the term fixed for the repayment of any money lent by them to or for the incumbent of any benefice under the powers of one or more of the Acts enumerated in the Schedule hereto, such extension of term to be accompanied, at the discretion of the Governors, by the suspen-

sion for one, two, or three years of the payment of the annual instalment of principal due or to become due from the incumbent; such suspended annual instalments to be subsequently payable by the incumbent for the time being in respect of the year or years which by the aforesaid extension shall have been added to the term created by the mortgage affected thereby, and begin to accrue due as soon as the residue of the principal money shall have become repayable.

2. The discretionary powers given by this Act shall not be exerciseable beyond three years from the passing hereof, and the application of the provisions of this Act shall not in any way invalidate the instruments of security under which loans have been or may be granted by the Governors; the said provisions shall extend and apply to such instruments as if originally fully and expressly inserted therein; provided always, that the foregoing provisions shall not authorise the Governors to relinquish any portion of the current interest due or to become due on such securities.

3. This Act may be cited as the Incumbents of Benefices Loans Extension Act, 1881.

SCHEDULE.

17 Geo. III. c. 53; 21 Geo. III. c. 66; 7 Geo. IV. c. 66; 1 & 2 Vict. c. 23; 1 & 2 Vict. c. 106; 28 & 29 Vict. c. 69; 34 & 35 Vict. c. 43; 35 & 36 Vict. 96.

CHAP. 26.

Stratified Ironstone Mines (Gunpowder) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Title of Act.*
2. *Power to exempt ironstone mines from regulation as to cartridges under 35 & 36 Vict. c. 76. s. 51.*

An Act to amend the Law relating to the use of Gunpowder in certain Stratified Ironstone Mines.

(11th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Stratified Ironstone Mines (Gunpowder) Act, 1881.

2. (1.) It shall be lawful for one of Her Majesty's Principal Secretaries of State, if he shall think fit, on the application of the owner, agent, or manager of any stratified ironstone mine in the lias formation, to exempt such mine from so much of the general rule eight

in the Coal Mines Regulation Act, 1872, as forbids gunpowder or other explosives or inflammable substance from being taken into or being in the possession of any person in any mine except in cartridges.

(2.) The application shall be transmitted by the owner, agent, or manager to the inspector of the district, and the requirements of sections fifty-three and fifty-seven of the Coal Mines Regulation Act, 1872, as to the posting of any proposed special rule, shall extend to any such application: Provided that the exemption shall not come into force until granted by the Secretary of State.

(3.) The Secretary of State may at any time revoke such exemption, but such revocation shall not come into force until written or printed notice thereof has been posted up at the mine for twenty-four hours.

(4.) A list of the exemptions granted or revoked under this Act shall be set forth by the inspector of the district in his annual report.

CHAP. 27.

Burial Grounds (Scotland) Act, 1855, Amendment Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Powers of sale to parochial boards.*

An Act to amend the Burial Grounds (Scotland) Act, 1855.

(11th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Burial Grounds (Scotland) Act, 1855, Amendment Act, 1881.

2. Where the parochial board of any parish or united parish has provided or may hereafter provide a burial ground for such parish or united parish under the provisions of the Burial Grounds (Scotland) Act, 1855, and

additional burial grounds, one or more, have been or may hereafter be provided for any such parish or united parish, the parochial board, under such restrictions and conditions as they think proper, may sell the exclusive rights mentioned in section eighteen of the said Act in the whole or such parts of any one or more of such additional burial grounds as the parochial board, with the sanction of the sheriff or sheriff substitute, shall appropriate

for the purpose; and the provision in section eighteen of the said Act that such exclusive rights shall not extend in all to a space greater than one half of the burial ground provided by the parochial board shall not apply to the additional burial grounds aforesaid, if the sheriff, having regard to the requirements of the parish or united parish, is of opinion that the said provision should not be enforced.

CHAP. 28.

Local Government Board (Ireland) Amendment Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Payment of seed loans.*
2. *Grants to distressed unions.*
3. *Explanation of 35 & 36 Vict. c. 69.*
4. *Short title.*

An Act to make provision for the payment by reduced Instalments of Loans under the Seed Supply (Ireland) Act, 1880; and to amend and explain the Relief of Distress (Ireland) Amendment Act, 1880, and the Local Government Board (Ireland) Act, 1872.

(11th August 1881.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this Parliament assembled, as follows:

1. The board of guardians of any union may, with the consent of the Local Government Board, divide, with reference to all or any of the electoral divisions of the union, each special rate which the guardians are empowered to make under the provisions of the seventh section of the Seed Supply (Ireland) Act, 1880, as amended by the Relief of Distress (Ireland) Amendment Act, 1880, into two equal special rates (in this Act referred to as reduced seed rates), so that the sum which under the provisions of the said Act should be levied in any one year by means of one special rate shall be levied in two consecutive years by means of two special rates. Where a resolution has been adopted by the board of guardians that such division should take effect, the first of

the reduced seed rates shall be made at the same time as the first ordinary rate made for the relief of the poor in the union after the date of the resolution of the board of guardians. The subsequent reduced seed rates shall be made in consecutive years, one in every year, at the same time as the ordinary rate made for the relief of the poor in the union after the first day of August in each year.

The following conditions shall apply to every resolution of any board of guardians on the subject of the division of such special rates:

- (1.) Such resolution shall only be adopted by a majority of the guardians present and voting at a meeting duly assembled after fourteen days notice given in the manner required by the general regulations of the Local Government Board;
- (2.) Such resolution shall not relieve the guardians of the union from any liability under the Seed Supply (Ireland) Act, 1880, as amended by the Relief of Distress (Ireland) Amendment Act, 1880, in respect of any special rate made, or which ought to have been made, before the adoption of the resolution by the board of guardians.

Where any special rate is so divided under this Act, the repayment by the guardians of the union to the Commissioners of Public Works of the loan in respect of which the special rate was leviable shall be made by equal instalments, in this Act referred to as

reduced instalments, which shall correspond in number to the number of the reduced seed rates authorised to be made, and shall be payable to the Commissioners of Public Works in consecutive years on the first day of August in each year; the first of such reduced instalments shall, notwithstanding anything contained in the Seed Supply (Ireland) Act, 1880, requiring the payment to be made at some other time, whether before or after the passing of this Act, be due and payable to the Commissioners on the first day of August after the date of the resolution of the board of guardians.

Where the board of guardians of any union have failed to make provision for the levying of the special rate, which should have been made in respect of all or any of the electoral divisions of the union at the same time as the first ordinary rate made for the relief of the poor in the union after the first day of August one thousand eight hundred and eighty, the Local Government Board may, if they think fit, by order direct the board of guardians to make a special seed rate for the purposes of the said Act, at the same time as the first ordinary rate for the relief of the poor in the union after the making of such order: And in such case the repayment by the board of guardians to the Commissioners of Public Works of the first instalment of the loan shall be made on the first day of August following the making of such order. In the case of any such union the provisions of this Act relative to the division of special rates shall only apply to the second of the special rates leviable in such union.

2. The second section of the Relief of Distress (Ireland) Amendment Act, 1880, shall be amended as follows:

(1.) Any grant which the Commissioners of Public Works are empowered to make under that section may be made by them,

on the recommendation of the Local Government Board, signified before the first day of April one thousand eight hundred and eighty-two, to the board of guardians of any union in which outdoor relief was at any time authorised to be given under the third section of the Relief of Distress (Ireland) Act, 1880, notwithstanding that the order authorising the giving of such outdoor relief has ceased to be in force at the time of the making of such grant;

(2.) The board of guardians of any union to whom any grant is made under this section shall apply the money so granted in defraying any costs, charges, expenses, or liabilities incurred by them prior to the twenty-ninth day of September one thousand eight hundred and eighty-one in administering the Relief of Distress (Ireland) Act, 1880, or the Acts relating to the relief of the poor in Ireland.

3. Whereas doubts have arisen as to the construction of the Local Government Board (Ireland) Act, 1872, so far as it relates to property formerly vested in the Commissioners for administering the laws for the relief of the poor in Ireland, and it is expedient to remove such doubts, therefore it is hereby declared that all property, real and personal, and all rights of action and other rights relative to property vested in or belonging to the Commissioners for the relief of the poor in Ireland in their capacity as such Commissioners at the time of the passing of the said Act were thereby transferred to and became vested in the Local Government Board for Ireland, subject, however, to any rights, charges, or liabilities affecting the same.

4. This Act may be cited as the Local Government Board (Ireland) Amendment Act, 1881.

CHAP. 29.

Reformatory Institutions (Ireland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Power to grand juries and certain town councils to contribute towards building, &c. reformatories.*
2. *Power to grand juries, &c. to borrow money to build, &c. reformatories.*
3. *Mode of security.*
4. *Principal as well as interest to be charged.*
5. *Certain clauses of 10 & 11 Vict. c. 16. as to borrowing money incorporated.*
6. *Provisions as to notice by grand jury.*
7. *Provision as to order for borrowing.*
8. *Reformatory to be certified.*

9. *Power to Commissioners of Public Works to make loans.*
10. *Repayment of loans.*
11. *Charge upon lands and premises.*
12. *Insurance of premises subject to loan.*
13. *Commissioners to make an order.*
14. *Additional provisions as to enforcement of payment of loan.*
15. *Short title.*

An Act further to facilitate the building, enlargement, and maintenance of Reformatory Institutions in Ireland.
(11th August 1881.)

WHEREAS it is desirable to create additional facilities for the provision and improvement of reformatories in Ireland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. It shall be lawful for the grand jury of any county, county of a city, or county of a town, if they shall think fit, at any assizes, or for the town councils of the boroughs of Dublin, Limerick, and Cork, to contribute such sums of money, to be raised off such county or borough, and upon such conditions as such grand jury or town council may think fit, towards the alteration, enlargement, or rebuilding of a certified reformatory, or towards the establishment or building of a school intended to be a certified reformatory, or towards the purchase of any land required for the use of an existing reformatory, or for the site of any school intended to be a reformatory school.

2. Any grand jury and the town councils of Dublin, Limerick and Cork, may, with the approval of the chief secretary to the Lord Lieutenant, borrow money or give security for the repayment of money borrowed or to be borrowed for the purpose of defraying or contributing towards the expense of altering, enlarging, or rebuilding a certified reformatory, or towards the expense of the establishment or building of a school intended to be a certified reformatory, or towards the purchase of any land required for the use of an existing reformatory, or for the site of any school intended to be a reformatory school.

3. Any moneys borrowed, or for repayment of which security may be given under this Act, may be charged on any rate levied by the grand jury or town council borrowing or giving security, or on any property belonging to such town council, and shall be repaid, together

with the interest due thereon, out of such rate or property; and every such grand jury and town council may present such moneys, and make and levy such rates as may be required for such repayment.

4. When any grand jury or town council borrows or gives security for any money under this Act, they shall charge the rates or property out of which the moneys borrowed or secured are payable not only with the interest of the moneys so borrowed or secured, but also with the payment of such principal sum as will secure the repayment of the whole sum borrowed within a period not exceeding thirty-five years.

5. The clauses of the Commissioners Clauses Act, 1847, with the exception of the eighty-fourth clause, with respect to mortgages to be created by the Commissioners, shall form part of and be incorporated with this Act; and any mortgagee or assignee may enforce payment of his principal and interest by the appointment of a receiver.

In the construction of the said clauses "the Commissioners" shall mean the grand jury or town council.

6. Not less than two months previous notice of the intention of such grand jury or town council to take into consideration the making of a contribution, and the borrowing or securing of money under the provisions hereinbefore contained, at a time and place to be mentioned in such notice, shall be given by advertisement in some one or more newspaper or newspapers circulating within such county or borough, and also in the manner in which notices relating to business to be transacted by such grand jury or town council are usually given.

7. When such contribution or such borrowing or securing of money is proposed to be made by the town council of a borough, the order shall be made at a special meeting of the council.

8. No contract for borrowing or securing money under the provisions contained in this Act shall be entered into, unless the reforma-

tory is at the time of entering into such contract certified under the fourth section of the Act of the session of Parliament held in the thirty-first and thirty-second years of the reign of Her present Majesty, chapter fifty-nine.

9. In addition to purposes for which loans may be made under Acts already in force, it shall be lawful for the Commissioners of Public Works in Ireland, subject to such rules and regulations as may from time to time be made by the Commissioners of Her Majesty's Treasury, to make loans in such cases as the said Commissioners of Public Works may judge expedient for any of the purposes for which grand juries or town councils are by the provisions of this Act permitted to contribute or borrow or secure the repayment of money: Provided always, that the amount of any such loan shall not exceed five thousand pounds.

10. Every loan which shall be made under the provisions of this Act by the Commissioners of Public Works in Ireland shall be made repayable within such periods and at such rate of interest as are set forth in a minute of the Treasury made on the sixteenth day of August one thousand eight hundred and seventy-nine, with reference to loans to which section two of the Public Works Loans Act, 1879, applies, or as the Treasury may from time to time fix in pursuance of that section; and save as regards such periods and rate of interest, the enactments relating to loans made by the said Commissioners of Public Works for the purpose of public buildings erected wholly or partly out of moneys contributed by grand juries or town councils shall, so far as is consistent with this Act, apply in like manner as if a loan under this Act were a loan made in pursuance of those enactments; and any loan made by the Commissioners of Public Works under this Act shall be deemed to be an advance to which section four of the Public Works Loans (Ireland) Act, 1877, applies.

11. All lands upon which any buildings or erections may stand which shall be altered, enlarged, or rebuilt, or established, or built, or which shall have been purchased wholly or partly by means of a loan under this Act, and all such buildings and erections shall be deemed to be and shall be well charged with the payment of the principal and interest of such loan, and that in priority to all charges and incumbrances affecting the same, save and except quit rents and rentcharges in lieu of tithes, and except all charges prior in date (if any) charged upon the premises in favour of the Commissioners of Public Works: Provided

always, that in case such lands or buildings shall be held under any grant or demise, nothing herein contained shall prejudice or affect the right of the grantor or lessor in any such grant or demise or of any superior grantor or lessor.

12. When any loan shall be made under this Act by the Commissioners of Public Works, the said Commissioners, if they think fit, may insure against damage by fire all buildings and erections then or thereafter standing or being on the lands or premises charged with such loan, such insurance to be effected in such insurance office or company and in such sum of money, not exceeding the amount of such loan as the said Commissioners shall from time to time direct, and the said Commissioners shall keep on foot such insurance as aforesaid, and all premiums paid thereon by the said Commissioners shall be deemed to be included in all charges and securities whereby repayment of such loan shall be secured, and shall be forthwith recoverable in like manner as any principal or interest payable in respect of such loan.

13. The repayment of every loan which shall be made under the provisions of this Act shall be secured by an order of the said Commissioners of Public Works under the common seal of the Commissioners as incorporated under any Act of Parliament, and, if they require it, by the further security of at least three persons, the sufficiency and solvency of which persons shall be made out to the satisfaction of the said Commissioners, and by such security as any grand jury or town council may, under the provisions enabling such grand juries and town councils to borrow, or give security for the repayment of money, agree upon with the said Commissioners, all such securities to be subject to such conditions as the said Commissioners shall deem to be proper; and every such order shall set forth the amount of such loan, the names of the persons to whom or on whose application and on whose security the same has been made, and a description of the lands, premises, and other securities charged therewith. In all cases when the said Commissioners shall have made any such order they shall execute a duplicate thereof under their common seal, and forthwith cause the said duplicate order to be lodged with the registrar of deeds in the office for the registry of deeds in the city of Dublin, and the said registrar and his and their assistants, deputies, or other officers shall register the same in the same manner as any deeds or instruments are registered in the same office, and shall enter a memorial thereof in the abstract books and indexes of and

relating to memorials registered and kept in the said office, and shall return such registry in any search made in such registry office: Provided always, that no fees shall be payable in respect of such registration.

14. In any proceedings instituted by the Commissioners of Public Works for recovering any money due on account of any loan under this Act, the certificate of the Commissioners as so incorporated as aforesaid under their seal that the sum claimed is due on account of such loan shall be conclusive evidence of the facts therein stated.

It shall be the duty of every grand jury and

town council to whom any loan is made under this Act to do all matters and things necessary for providing for the repayment of all moneys due from time to time on account of such loan.

Nothing contained in this section shall be taken to prejudice any proceedings which the Commissioners of Public Works might institute for recovering any sum due to them on account of any loan made under this Act.

15. This Act may be cited for all purposes as the Reformatory Institutions (Ireland) Act, 1881.

CHAP. 30.

Customs (Officers) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

2. *Provision for employment by Customs of officers and clerks heretofore employed on bills of entry.*

An Act to provide for the employment of certain Officers and Clerks by the Commissioners of Customs.
(11th August 1881.)

WHEREAS by the Superannuation Act, 1859, it is enacted that for the purposes of that Act no person thereafter appointed shall be deemed to have served in the permanent Civil Service of the State, unless such person holds his appointment directly from the Crown or has been admitted into the Civil Service with a certificate from the Civil Service Commissioners:

And whereas the directors of the Customs Benevolent Fund have, in pursuance of letters patent, conducted the publication of daily returns of imports and exports known as bills of entry, and on the recent expiration of the letters patent, the Commissioners of Her Majesty's Customs have arranged to continue such publication, and desire to employ for that purpose some of the officers and clerks heretofore employed in such publication:

And whereas it is expedient, with a view to the remuneration and superannuation allowance of those officers and clerks, to provide for their admission into the Civil Service:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Customs (Officers) Act, 1881.

2. The Commissioners of Her Majesty's Customs with the consent of the Commissioners of Her Majesty's Treasury may take into permanent employment any officer or clerk heretofore employed by the directors of the Customs Benevolent Fund in connection with the publication of bills of entry, and any officer or clerk so taken into permanent employment shall be deemed to be in the permanent Civil Service of the State in like manner as if he had been admitted into the same with a certificate from the Civil Service Commissioners, and shall be entitled to receive remuneration and superannuation allowance accordingly; and further, shall be entitled, for the purpose of superannuation allowance, to count his past years of continuous service under the said directors as if they were years of service in the permanent Civil Service of the State.

CHAP. 31.

Annual Turnpike Acts Continuance Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Schedule 1.*
2. *Schedule 2.*
3. *Schedule 3.*
4. *Schedule 4.*
5. *Schedule 5.*
6. *Continuance of all other Turnpike Acts.*
7. *Extent of Act.*
8. *Short title.*

SCHEDULES.

An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith.

(11th August 1881.)

WHEREAS it is expedient to continue for limited times some of the Acts herein-after specified, and to repeal others:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Acts specified in the first schedule annexed hereto shall expire on the first day of November one thousand eight hundred and eighty-one.

2. The Acts specified in the first and second columns of the second schedule annexed hereto shall, to the extent specified in the third column thereof, be repealed on and after the first day of November one thousand eight hundred and eighty-one.

3. The Acts specified in the first and second columns of the third schedule annexed hereto shall, to the extent specified in the third column thereof, as from the date specified in the fourth column thereof, be subject to the modifications specified in the fifth column thereof, and shall, to the same extent, be repealed on and after the first day of November one thousand eight hundred and eighty-two,

unless Parliament in the meantime otherwise provides.

4. The Acts specified in the fourth schedule annexed hereto shall continue in force until the first day of November one thousand eight hundred and eighty-two, and no longer, unless Parliament in the meantime otherwise provides.

5. The Acts specified in the fifth schedule annexed hereto shall be repealed on and after the first day of November one thousand eight hundred and eighty-two, unless Parliament in the meantime otherwise provides, due regard being had in each case to local requirements, and to the special circumstances of the trust.

6. Such provisions, if any, of the said Acts mentioned in the said schedules as are not affected by the preceding sections, and all other Acts now in force for regulating, making, amending, or repairing any turnpike road which will expire at or before the end of the next session of Parliament, shall continue in force until the first day of November one thousand eight hundred and eighty-two, and to the end of the then next session of Parliament, unless Parliament in the meantime otherwise provides; but this section shall not affect any Act continued to a specified date and no longer.

7. This Act shall not apply to Scotland or Ireland.

8. This Act may be cited for all purposes as the Annual Turnpike Acts Continuance Act, 1881.



SCHEDULES.

SCHEDULES 1 TO 3.

County.	Name of Trust.	No. of Schedule.	No. of Act.
Chester -	Congleton and Buxton - - - - -	1	3
	Manchester and Wilmslow - - - - -	2	7
Cornwall -	Saltash - - - - -	2	9
Cumberland -	Carlisle and Eamont Bridge, Southern Division - - - - -	2	4
Derby -	Ashbourne, Sudbury, and Yoxall Bridge - - - - -	3	10
	Haddon and Bentley - - - - -	1	2
Dorset -	Bridport, Second District - - - - -	2	8
Lancaster -	Haslingden and Todmorden - - - - -	1	1
Denbigh -	Wem and Bronygarth, Second District - - - - -	2	5, 6

FIRST SCHEDULE.

Acts which are to continue in force until the 1st of November 1881, and no longer.

Date of Act.	Title of Act.
20 & 21 Vict. c. cxliv. -	1. An Act for repairing the road from Haslingden to Todmorden, and several branches therefrom, all in the county palatine of Lancaster; and for other purposes.
28 & 29 Vict. c. cevii. -	2. An Act for repairing the road from the Guide Post below Haddon out of the Bakewell turnpike road into the Bentley and Ashbourne turnpike road, in the county of Derby; and for other purposes.
29 Vict. c. lvi. -	3. An Act to extend the term and amend the provisions of an Act for repairing, amending, and maintaining the road from Congleton, in the county of Chester, to a branch of the Leek turnpike road at Thatchmarch Bottom, in the parish of Hartington, in the county of Derby, and from the Lowe to the Havannah Mills, in the said county of Chester.

SECOND SCHEDULE.

Acts which are to be repealed to the extent specified on and after the 1st of November 1881.

1. Date of Act.	2. Title of Act.	3. Extent of Repeal.
22 & 23 Vict. c. xxv.	4. An Act to repeal an Act passed in the eleventh year of the reign of King George the Fourth, chapter one hundred and ten, intituled "An Act for more effectually repairing the road from Carlisle to Penrith, and from Penrith to Eamont Bridge, in the county of Cumberland," and to make other provisions in lieu thereof.	So far as the same relates to the "Southern Division" of the road.

1. Date of Act.	2. Title of Act.	3. Extent of Repeal.
23 Vict. c. viii.	5. An Act for more effectually repairing the road leading from Wem to the Lime Rocks at Bronygarth, in the county of Salop, and for making several lines of road connected with the same in the counties of Salop and Denbigh.	So far as the same relate to the roads numbered one, three, four, five, and six, of the second district.
25 & 26 Vict. c. cxxx.	6. An Act to amend the "Wem and Bronygarth Roads Act, 1860," and to confer further powers in relation to the said roads.	
24 & 25 Vict. c. lxxv.	7. An Act for the Manchester and Wilmslow turnpike roads, in the counties palatine of Lancaster and Chester.	The entire Act.
25 Vict. c. xv.	8. An Act for continuing the term and amending and extending the provisions of the Act relating to the second district of the Bridport turnpike roads, in the county of Dorset, and to make other provisions in lieu thereof.	The entire Act.
29 & 30 Vict. c. cix.	9. An Act to repeal an Act passed in the third year of the reign of His Majesty King William the Fourth, intituled "An Act for more effectually repairing and improving several roads in the counties of Cornwall and Devon, leading to the borough of Saltash, in the county of Cornwall, and for making a new branch and deviations of roads to communicate therewith," and for granting more effectual powers in lieu thereof.	The entire Act.

THIRD SCHEDULE.

Act which, to the extent specified, is to be subject to modifications from the 1st of November 1881, and which, to the same extent, is to be repealed on and after the 1st of November 1882, unless Parliament in the meantime otherwise provides.

1. Date of Act.	2. Title of Act.	3. Extent to which Act is modified and continued.	4. Date from which Modifications are to commence.	5. Modifications.
26 & 27 Vict. c. xcvi.	10. An Act to repeal an Act passed in the eleventh year of the reign of His late Majesty King George the Fourth, intituled "An Act for repairing, altering, and improving the roads from Ashbourne to Sudbury, and from Sudbury to Yoxall Bridge, and from Hatton Moor to Tutbury, and from Uttoxeter to or near the village of Draycott-in-the-Clay, and from Hadley Plain on the late forest or chase of Needwood to Callingwood Plain on the same late forest or chase," and to make other provisions in lieu thereof.	So far as the same relates to the Ashbourne, Sudbury, and Yoxall Bridge, or "the Sudbury district" of the roads.	1 November 1881	The tolls at Clifton, Cubley, and Yoxall Bridge gates to be reduced by one half.

FOURTH SCHEDULE.

Acts which are to continue in force until the 1st of November 1882, and no longer, unless Parliament in the meantime otherwise provides.

County.	Name of Trust.	No. of Act.
Derby	Chesterfield to Worksop	2
	Glossop and Marple Bridge	1
Devon	Kingsbridge and Dartmouth	11
Dorset	Blandford and Wimborne	8
	Poole	12
Durham	Egleston Roads	6
Kent	Tonbridge and Ightham	10
Lancaster	Rochdale and Edenfield	9
Lincoln	Lincoln Heath and Market Deeping:—Bourn district	4
Sussex	Beeding and Old Shoreham	5
	Horsham and Steyning	5
York	Doncaster and Tadcaster	7
Flint	Lower King's Ferry	3

Date of Act.	Title of Act.
23 Vict. c. xxi.	1. An Act to repeal the Act for amending and improving the road from Glossop to Marple Bridge, in the county of Derby, and the several branches of roads leading to and from the same, and to make other provisions in lieu thereof.
23 Vict. c. xxiii.	2. An Act for more effectually repairing the road from Chesterfield in the county of Derby to Worksop in the county of Nottingham.
23 Vict. c. xxxii.	3. An Act for the further continuance of the Lower King's Ferry Roads Turnpike Trust and for other purposes.
23 Vict. c. xli.	4. An Act to provide for the management, maintenance, and repair of the turnpike road from Lincoln Heath to Market Deeping, and other roads in connexion therewith; and for other purposes; <i>so far as the same relates to "the Bourn district."</i>
23 Vict. c. lxxx.	5. An Act for repairing the roads from Horsham to Steyning, and from thence to the top of Steyning Hill in the county of Sussex, and from the bottom of Steyning Hill to Slaughter's Corner in the parish of Beeding, and from thence to Shoreham Bridge in the parish of Old Shoreham in the said county.
23 & 24 Vict. c. cxii.	6. An Act to create a further term in the Egleston roads; to add other roads to the trust; to repeal, amend, and extend the Act relating to the said roads; and for other purposes.
23 & 24 Vict. c. cxviii.	7. An Act for the Doncaster and Tadcaster Road, in the west riding of the county of York.
23 & 24 Vict. c. cxlvi.	8. An Act to repeal an Act of the first year of the reign of King William the Fourth, intituled "An Act for repairing the road from Wimborne Minster to Blandford Forum, in the county of Dorset, and to make other provisions in lieu thereof; and for other purposes."
29 Vict. c. lxxix.	9. An Act for repairing and maintaining the road from Rochdale to Edenfield, in the county palatine of Lancaster; and for other purposes.

Date of Act.	Title of Act.
29 & 30 Vict. c. cx. -	10. An Act to repeal an Act passed in the eleventh year of the reign of His Majesty King George the Fourth, intituled "An Act for amending and improving the road from Tonbridge to Ightham and other roads communicating therewith, in the county of Kent; and for granting more effectual powers in lieu thereof."
29 & 30 Vict. c. clxx. -	11. An Act to continue the Kingsbridge and Dartmouth Turnpike Roads Trust, in the county of Devon; and for other purposes.
30 Vict. c. xl. -	12. An Act for the Poole roads, in the county of Dorset.

FIFTH SCHEDULE.

Acts which are to be repealed on and after the 1st of November 1882, unless Parliament in the meantime otherwise provides, due regard being had in each case to local requirements, and to the special circumstances of the Trust.

County.	Name of Trust.	No. of Act.
Derby -	Ashbourne, Sudbury, and Yoxall Bridge - - - -	2
Stafford -	Uttoxeter and Callingwood Plain - - - -	2
Flint -	St. Asaph and Conway - - - -	1

Date of Act.	Title of Act.
26 Vict. c. xix. -	1. An Act to repeal an Act passed in the third year of the reign of His late Majesty King William the Fourth, intituled "An Act for the more effectually repairing and maintaining the turnpike road from Pant Evan Brook in the county of Flint to Abergele in the county of Denbigh, and thence to Conway Ferry House in the county of Carnarvon."
26 & 27 Vict. c. xxviii. -	2. An Act to repeal an Act passed in the eleventh year of the reign of His late Majesty King George the Fourth, intituled "An Act for repairing, altering, and improving the roads from Ashbourne to Sudbury, and from Sudbury to Yoxall Bridge, and from Hatton Moore to Tutbury, and from Uttoxeter to or near the village of Draycott-in-the-Clay, and from Hadley Plain on the late forest or chase of Needwood to Callingwood Plain on the same late forest or chase," and to make other provisions in lieu thereof.

CHAP. 32.

Public Loans (Ireland) Remission Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extinguishment of debts in schedule.*

SCHEDULE.

An Act to remit certain Loans formerly made out of the Consolidated Fund.

(11th August 1881.)

WHEREAS certain advances out of the Consolidated Fund have been made in Ireland for the objects mentioned in the schedule to this Act, and upon each of these advances the amount mentioned in the said schedule is unpaid, and due to the Consolidated Fund:

And whereas no sums have been recovered upon the said advances during a long period of years, and it is inexpedient to keep open for any further period the account of such advances:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Loans (Ireland) Remission Act, 1881.

2. The debts due to the Consolidated Fund mentioned in the schedule to this Act, shall, after the passing of this Act, be extinguished, and the amount thereof shall be deemed to have been a free grant by Parliament.

SCHEDULE.

Object of Advance.	Acts under which Advance was made.	Amount Advanced.	Amount Repaid.	Principal Outstanding.	Account of Advance and Reason for Remission.
Tithe Composition.	4 Geo. 4. c. 99	<p>£ s. d.</p> <p>279,451 2 7</p>	<p>£ s. d.</p> <p>51,724 6 6</p>	<p>£ s. d.</p> <p>227,726 16 1</p>	<p>The money was advanced in order to facilitate the execution of the Irish Tithe Composition Act 4 Geo. 4. c. 99. Advances were made in the case of 2,345 different parishes during the period from 1824 to 1844 for the expenses of the execution of the Act, part of which expenses consisted in the remuneration of the Commissioners appointed under the Act to assess the composition to be paid in the several parishes. One of the Commissioners was appointed in most cases by or on behalf of the tithe-owner, and one by the vestry. The advances were to be repaid by the owners and occupiers of land in five equal yearly instalments, but the sum advanced to pay the Commissioner appointed by the tithe-owner was to be repaid out of the tithe composition at such time and in such manner as the Lord Lieutenant should direct. No interest was charged on the advances. Repayments commenced in 1826; but, after the tithe disturbances in 1831, and the passing of 2 & 3 Will. 4. c. 119., no further steps were taken for the recovery of the advances.</p>

Object of Advance.	Acts under which Advance was made.	Amount Advanced.	Amount Repaid.	Principal Outstanding.	Account of Advance and Reason for Remission.
Tithe Relief	3 & 4 Will. 4. c. 100. 1 & 2 Vict. c. 109. 2 & 3 Vict. c. 97.	<p>£ s. d.</p> <p>900,000 0 0</p>	Nil.	<p>£ s. d.</p> <p>900,000 0 0</p>	<p>By the Act 3 & 4 Will. 4. c. 100., the issue of 1,000,000<i>l.</i> was authorised to render unnecessary the collection of tithes and compositions for tithes in Ireland in 1833, and of the arrears of tithes for the two preceding years. 640,000<i>l.</i> was advanced to tithe-owners to be repaid in five equal yearly instalments without interest.</p> <p>The Act 1 & 2 Vict. c. 109. provided for the remission in certain cases of these instalments, and also authorised the application of the instalments which were received, and of a further sum of 260,000<i>l.</i> authorised to be raised, towards indemnifying persons entitled to arrears of compositions for tithes for the years 1834–37. Partly in consequence of the above no instalments in respect of the 640,000<i>l.</i> reached the Consolidated Fund, and no part of the 260,000<i>l.</i> has ever been repaid, leaving a total of 900,000<i>l.</i> unpaid. This 900,000<i>l.</i> was raised by Exchequer Bills, which, together with the sum of 31,862<i>l.</i> 10<i>s.</i> for interest thereon, were converted under 2 & 3 Vict. c. 97. s. 17. into 1,018,448<i>l.</i> 1<i>s.</i> 1<i>d.</i> capital stock.</p>

CHAP. 33.

Summary Jurisdiction (Scotland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Application.*
4. *Regulation of expenses.*
5. *Amount of expenses to be stated in conviction or decree.*
6. *Power to mitigate penalties.*
7. *Powers of sheriff.*
8. *Imprisonment competent in default of recovery by poinding. Executions of warrants of poinding and sale.*
9. *Procedure.*
10. *Boundaries of jurisdiction.*
11. *Application to Government prosecutions.*
12. *Summonses, &c. may be served by police constables.*

An Act to amend the Summary Procedure Act, 1864. (11th August 1881.)

WHEREAS by an Act passed in the ninth year of King George the Fourth, chapter twenty-nine, intituled an Act to authorise additional Circuit Courts of Justiciary to be

held and to facilitate criminal trials in Scotland, provision was made for the summary prosecution of offences before sheriffs of counties in certain cases:

And whereas by an Act passed in the Parliament held in the seventh year of King William the Fourth and the first year of Her present

Majesty, chapter forty-one, intituled "An Act for the more effectual recovery of small debts in the sheriff courts and for regulating the establishment of circuit courts for the trial of small debt causes by the sheriffs in Scotland," herein-after called the Small Debt Act, 1837, provision was made for the recovery of statutory penalties by way of action in the sheriff court, and a scale of fees was fixed for such prosecutions:

And whereas by the Summary Procedure Act, 1864, further provision was made for the trial of offences punishable on summary conviction, and for the summary recovery of penalties:

And whereas by the Summary Jurisdiction Act, 1879, additional powers were conferred upon courts of summary jurisdiction in England to mitigate and modify punishments in summary proceedings:

And whereas it is expedient to amend the Summary Procedure Act, 1864, to extend certain of the provisions of the Summary Jurisdiction Act, 1879, to Scotland, and also to regulate the costs and expenses of summary procedure in Scotland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Summary Jurisdiction (Scotland) Act, 1881, and shall be construed as one with the Summary Procedure Act, 1864, so far as consistent with the tenour of these Acts respectively, and these Acts may be cited together as the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and shall apply to Scotland only.

2. This Act shall commence on the first day of January one thousand eight hundred and eighty-two.

3. The provisions of the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, herein-after called the Summary Jurisdiction Acts, shall apply to all summary proceedings as enumerated and described in the third section of the Summary Procedure Act, 1864, and to all proceedings of the like nature which by any future Act are directed or authorised to be taken summarily, or under the provisions of the Summary Jurisdiction Acts, and the thirty-second section of the Summary Procedure Act, 1864, is hereby repealed: And it shall not be necessary in any case to keep a record of the evidence, except so far as may be required by the Act conferring jurisdiction in the matter of the prosecution, or by the sixth section of

the Summary Prosecutions Appeals (Scotland) Act, 1875. Whereas doubts have arisen whether the third section of the Summary Procedure (Scotland) Act, 1864, includes and applies to prosecutions under the twenty-third and twenty-fourth sections of the Salmon Fisheries (Scotland) Act, 1868, be it enacted, that the provisions of the Summary Jurisdiction Acts shall apply to such prosecutions, and in all similar cases when in addition to a penalty a forfeiture is provided by statute. The provisions of the Summary Jurisdiction Acts shall also apply to prosecutions under the Tweed Fisheries Acts: Provided always, that it shall be in the option of the prosecutor to proceed either under the forms of the Tweed Fisheries Acts, or under the forms of the Summary Jurisdiction Acts: Provided also, that where there is a general or local Police Act in force, it shall be optional in police prosecutions either to use the forms prescribed by such Act, or the forms provided by the Summary Jurisdiction Acts.

4. The costs and expenses of all complaints and proceedings instituted under the Summary Jurisdiction Acts shall be regulated by the table of fees contained in the Schedule A. to this Act annexed, and no other or higher fees shall be allowed on taxation, and where expenses shall be awarded against a respondent the decree shall be subject to the following limitations:

(a.) Where the penalty or penalties imposed shall not exceed twelve pounds the total expenses decerned for shall not exceed three pounds:

(b.) Where the penalty or penalties imposed shall not exceed twelve pounds but it appears to the Court that the reasonable expenses of the complainer's witnesses, together with the other expenses, exceed the sums herein-before allowed, the Court may direct the expenses of such witnesses to be paid in whole or in part out of the penalty.

The directions contained in the schedule shall be deemed to be part of this enactment.

5. In all proceedings under the Summary Jurisdiction Acts in every conviction, order, decree of absolvitor, decree dismissing the complaint, or other decree disposing of the complaint, and not at any subsequent time, the Court may, subject to the foregoing provisions, when a finding of expenses is competent, find such sum to be due in name of expenses, if any, as it considers reasonable. Expenses shall in all cases be recovered as if they formed part of the penalty, and the same diligence shall follow in case of default in payment.

6. In all proceedings under the Summary Jurisdiction Acts—

- (a.) Where the punishment of imprisonment is imposed by Act of Parliament, the Court may, if it thinks the justice of the case demands it, substitute for imprisonment a fine not exceeding twenty-five pounds or reduce the amount of imprisonment, and notwithstanding any enactment to the contrary impose the same without hard labour, and when the punishment of a penalty or fine is imposed it may reduce the amount of such fine, and when in the case either of imprisonment or a fine the respondent is required to come under his own obligation or to find caution or security for keeping the peace and observing some other condition, or to do any of such things, the Court may dispense with any such requirement or any part thereof:

Provided that nothing in this Act shall authorise the Court to reduce the amount of a fine when the Act prescribing such amount carries into effect a treaty, convention, or agreement with a foreign state, and such treaty, convention, or agreement stipulates for a fine of minimum amount:

Provided further, that this section shall not apply to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces:

- (b.) Where a warrant of imprisonment is granted, whether in default of payment of a penalty or expenses, or for failure to find caution or security, or in default of recovery of sufficient goods by pouncing and sale, when the amount adjudged to be paid, or for which security is to be found—

Does not exceed ten shillings The period of imprisonment shall not exceed seven days.

Exceeds ten shillings but does not exceed one pound - Fourteen days.

Exceeds one pound but does not exceed five pounds - One month.

Exceeds five pounds but does not exceed twenty pounds - Two months.

Exceeds twenty pounds - Three months:

- (c.) Where any sum is adjudged to be paid, the Court may do any or all of the following things:

- (1.) Allow time for payment:
- (2.) Direct payment to be made by instalments:
- (3.) Require security or caution to be found for the payment of such sums or instalments at such time or times as the Court may prescribe:

Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in

payment of all the instalments then remaining unpaid.

The Court directing payment of a sum or of an instalment may direct the payment to be made at such times and places and to such person as the Court may specify, and every person to whom such sum or instalment is paid, where not the clerk of Court, shall as soon as may be pay over on account for the same to the clerk, to be applied by him in manner provided by the special Act. In complaints not founded on any special Act the maximum sentence shall continue to be as defined by the first recited Act.

7. In all prosecutions which might competently have been instituted by summary complaint and under the Summary Jurisdiction Acts, but which shall be instituted by criminal libel and shall be tried by the sheriff and a jury, the sheriff or his substitute shall have all the powers conferred by the preceding section upon the Court in proceedings under the Summary Jurisdiction Acts.

8. (1.) Subject to the provisions of section six, in all proceedings under the Summary Jurisdiction Acts where a warrant of pouncing and sale is competent, a warrant of imprisonment in default of recovery of sufficient goods shall likewise be competent for a period not exceeding three months, and the Court shall specify the term of imprisonment in the warrant.

(2.) All warrants of pouncing and sale under the Summary Jurisdiction Acts shall be executed in manner provided by the Small Debt Act, 1837, provided that in place of the customary notice of sale, notice of every sale under such warrants shall be given by advertisement in some newspaper circulating in the place of sale on the day of sale or within three days preceding the same.

9. (1.) Every complaint at the instance of a private prosecutor or complainer under the Summary Jurisdiction Acts may be signed either by such private prosecutor or complainer, or by a duly qualified law agent on his behalf, and such law agent may, in the absence of the private prosecutor or complainer, appear in Court, and conduct the prosecution on his behalf.

(2.) In all cases where a warrant of citation or apprehension is to be granted on sworn information, such information may be sworn to before any justice of the peace or magistrate of a burgh, although the prosecution is to be before the sheriff.

(3.) Where an adjournment is granted on the respondent's application, the court may,

instead of ordaining the respondent to find security to appear, appoint the respondent to attend the sitting of the court to which the case is adjourned under a suitable penalty in case he shall fail to appear.

(4.) In all cases where an appeal is competent, it shall be in the power of the Court of Appeal, on the application of either party and on such terms as to the Court shall seem fit, to amend the case, and all appeals from proceedings under the Summary Jurisdiction Acts shall be taken to the High Court of Justiciary at Edinburgh or on circuit.

(5.) A warrant of imprisonment may be in the form contained in the Schedule B. to this Act annexed.

10. In all proceedings for the trial of offences under the Summary Jurisdiction Acts—

(1.) Where the offence is committed in any harbour, river, arm of the sea, or other water (tidal or other) which runs between or forms the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts:

(2.) Where the offence is committed on the boundary of the jurisdiction of two or more courts, or within the distance of five hundred yards of any such boundary, or is begun within the jurisdiction of one court, and completed within the jurisdiction of another court, such offence may be tried by any one of such courts:

(3.) Where the offence is committed on any person, or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried by any court through whose jurisdiction such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed, and where the side, bank, centre, or other part of the highway, road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts a person may be tried for such offence by any one of such courts:

(4.) Any offence which is authorised by this section to be tried by any court may be dealt with, heard, tried, determined, adjudged, and finished, as if the offence had been wholly committed within the jurisdiction of such court.

11. The Summary Jurisdiction Acts shall apply to all summary proceedings under the statutes relating to the Post Office.

Every offence under the statutes relating to the Post Office for which a person is liable to forfeit a sum not exceeding twenty pounds may be prosecuted in manner provided by the Summary Jurisdiction Acts.

The Summary Jurisdiction Acts shall, notwithstanding any special provisions to the contrary contained in any of the statutes relating to Her Majesty's revenue under the control of the Commissioners of Inland Revenue or the Commissioners of Customs, apply to all summary proceedings under or by virtue of any of the said statutes; and in such proceedings it shall be lawful to grant decree for the condemnation of goods seized as forfeited under the provisions of the said Acts, and prosecutions under the Revenue Acts shall continue to be subject to appeal to quarter sessions and to the Court of Exchequer in Scotland in manner therein provided:

Provided that where the sum adjudged by conviction under or by virtue of any of the said statutes to be paid exceeds fifty pounds, the period of imprisonment imposed in respect of the nonpayment of such sum, or in respect of the default of a sufficient distress to satisfy such sum, may exceed three months but shall not exceed six months.

And the twenty-fifth section of the Summary Procedure Act, 1864, is hereby repealed in so far as it applies to proceedings under any of the statutes relating to Her Majesty's revenue.

12. All summonses, complaints, warrants, orders, or other process in prosecutions under the Summary Jurisdiction Acts at the instance of procurators fiscal, parochial boards, or school boards may be served and executed by police constables within the county, burgh, or police district in which the persons upon whom the same are to be served or executed shall reside or may be found.

STATUTES OF THE REALM.

SCHEDULE A.

TABLE OF FEES.

I.—TO THE PROCURATOR FISCAL OR QUALIFIED
LAW AGENT ACTING FOR A PRIVATE PROSECUTOR.

	£	s.	d.
Framing the complaint and whole proceedings prior to trial	0	7	6
Each copy of complaint for service	0	1	0
Attending at trial—			
If plea of guilty	0	5	0
If proof led	0	7	6
If case adjourned for second diet	0	5	0

II.—COURT OR CLERK'S DUES.

For each complaint	0	2	6
For whole proceedings at trial—			
If plea of guilty	0	2	6
If proof led	0	5	0
Extract of any judgment, conviction, or order	0	1	0
To the bar officer for whole proceedings—			
If plea of guilty	0	0	6
If proof led	0	1	0

III.—OFFICER'S FEES.

For serving each complaint and returning execution	0	1	6
----------------------------------------------------	---	---	---

	£	s.	d.
For citing each witness	0	0	6
For apprehending a respondent or witness	0	2	6
For each hour the prisoner is necessarily in the custody of the officer beyond the first	0	1	0
For travelling expenses, pointing, sale, or arrestment, the same allowances as in I. Vic., cap. 41			
In any case where a concurrent or assistant is required he will be allowed a sum equal to two thirds of the fee payable to the officer for the same business.			

Where an officer or concurrent has to charge for a conveyance, the mileage rates will not be allowed.

SCHEDULE B.

Decerns and adjudges the said to be imprisoned for the space of , and thereafter to be set at liberty, and for that purpose grants warrant to officers of law to convey the said to the prison of , there- after to be dealt with in due course of law.

If the sentence of imprisonment is alternative the necessary variation will be made in this form.

CHAP 34.

Metropolitan Open Spaces Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. Interpretation clause.
2. Power to trustees to transfer certain open spaces to local authority.
3. Power to transfer other open space to local authority.
4. Power to transfer disused burial grounds to local authority.
5. Powers and duties of local authority.
6. Byelaws.
7. Metropolitan Board and vestry or district board may carry out Act jointly.
8. Provision for extra-parochial places.
9. Provision for compensation.
10. Expenses.
11. Extent of Act.
12. Application in city of London.
13. Short title.

An Act to amend the Metropolitan
Open Spaces Act, 1877.
(11th August 1881.)

WHEREAS by the Metropolitan Open Spaces Act, 1877, certain facilities were provided for making available the open spaces in the metropolis for the use of the inhabitants thereof for exercise and recreation, and it is expedient to amend and extend the said Act, and to provide greater facilities for the purpose aforesaid:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In this Act, unless the context otherwise requires—

"Open space" means any land (whether inclosed or uninclosed) which is not built on, and which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied; but shall not include any inclosed land which has not a public road or footpath completely round the same;

"The metropolis" means the metropolis as defined by the Metropolitan Management Act, 1855;

"The Metropolitan Board" means the Metropolitan Board of Works as constituted by the same Act;

"Vestry" means a vestry of one of the parishes specified in Schedule A. of the same Act;

"District board" means a board of works of one of the districts specified in Schedule B. of the same Act;

"The corporation" means the mayor and commonalty and citizens of the city of London, and the powers conferred upon them by this Act may be exercised by the mayor, aldermen, and commons of the said city in common council assembled;

The "owner" of a churchyard, cemetery, or burial ground means the person or persons, corporation sole, or body corporate in whom the soil and freehold of such churchyard, cemetery, or burial ground is vested, whether as appurtenant or incident to any benefice or cure of souls, or otherwise.

"The term "burial ground" shall include any ground, whether consecrated or not, which has been at any time set apart for the purposes of interment, and in which interments have taken place since the year 1800.

2. Where any open space within the metropolis is under the provisions of any Private or Local Act of Parliament placed under the care and management of trustees or other persons, with a view to the preservation and regulation of the same as a garden or open space, it shall be lawful for the said trustees or other the managing body thereof for the time being, in pursuance of any resolution duly passed as herein-after mentioned, and with the consent, to be signified in manner herein-after appearing, of the owners and occupiers of any houses fronting upon, or the owners or occupiers of which are liable to be specially rated for the maintenance of the open space, to convey, assign, or transfer for valuable or nominal consideration, or by way of gift, to the Metropolitan Board, or to the vestry or district board of the parish or district in which such open space or any part thereof is situate, the soil and freehold of, or other their entire interest in, or (where no interest in the soil of such open space is vested in them) the entire care and management of the said open space, to the end that the same may be preserved for the enjoyment of the public; and upon such conveyance, assignment, or transfer such trustees or other managing body shall be relieved and discharged from all trusts, powers, and duties imposed upon them by the Act or other instrument under which they were constituted, or under which they then act or otherwise with reference to the said open space, but shall hold any purchase money paid for or in respect of the said open space in trust for the benefit of the persons or class of persons for whose benefit the said open space was previously preserved and managed by the said trustees, and such persons or class of persons shall be discharged from any special rate or other obligation previously imposed on them in respect of such open space.

It shall be lawful for any such trustees or managing body as aforesaid, in pursuance of any such resolution as aforesaid, and with such consent as aforesaid, for any valuable or nominal consideration, by way of rent or otherwise, or without any consideration, to grant or transfer to the Metropolitan Board, or to any such vestry or district board as aforesaid, any term of years or other limited interest in or any right or easement over such open space, or to enter into any agreement with the Metropolitan Board or any such vestry or district board as aforesaid for the opening to the public of such open space, and the care and management thereof by such board or vestry at all times or at any specified time or times, without the transfer to such board or vestry of any interest in the soil of

such open space; and any such grant, demise, transfer, or agreement as aforesaid shall be deemed a good execution of the trusts, powers, and duties imposed upon the said trustees by the Act or other instrument under which they are constituted or act.

A resolution under this section shall be deemed to have been duly passed if at a meeting of the trustees or other the persons constituting such managing body as aforesaid, summoned by at least one month's notice in writing left at or sent by post to their last known or usual place of abode, such resolution shall have been passed by a majority of two thirds in number of the persons present at such meeting, and if such resolution shall also have been confirmed by two thirds in number of the persons present at a second like meeting, to be summoned by such notice as aforesaid, and to be held at an interval of not less than one calendar month from the first meeting.

The consent of such owners and occupiers of houses as aforesaid shall be held to have been given and signified if, at a meeting of such persons summoned by at least one month's notice in writing given as herein-after directed, a resolution shall have been passed by a majority of at least two thirds in number of the persons present at such meeting consenting to the conveyance, grant, or transfer of the said open space as aforesaid, or to such an agreement with the Metropolitan Board, vestry, or district board as aforesaid; and if such resolution shall also have been confirmed by two thirds in number of such owners and occupiers present at a second like meeting, to be summoned in like manner to the first meeting, and to be held at an interval of not less than one calendar month from the first meeting.

Notice of such meeting shall be given by leaving the same or sending the same through the post to every house fronting upon, or the owner or occupier of which is liable to be specially rated for the maintenance of, the the said open space, and by inserting the same as an advertisement at least three times in any two or more London daily papers, and such notice shall state generally the object of the said meeting, and no such meeting shall be held between the first day of August in one year and the thirty-first day of January in the following year.

For the purposes of this section the owner of a house shall include any person entitled to any term of years therein; and the occupier of a house shall be the person rated to the relief of the poor in respect of the said house.

If at any meeting of such trustees or managing body, or at any meeting of such owners or occupiers as before mentioned, the resolution proposed at any such meeting be not carried, no meeting shall be called or held

with the same object in respect to the same garden or open space until the expiration of three years from the day on which such resolution so proposed was rejected at any such meeting as above mentioned.

A conveyance, assignment, demise, grant, or agreement under this section shall be made by an instrument under the common seal of the trustees or other managing body if such body be a corporation, and if it be not a corporation under the hands and seals of any five members of such body, or of all the members thereof if for the time being they be less than five in number.

The trustees or other the managing body of any such open space as aforesaid may (anything contained in the Act or other instrument under which they are constituted or act to the contrary notwithstanding), in pursuance of any such resolution as aforesaid, and with such consent as aforesaid, signified as aforesaid, admit persons not owning, occupying, or residing in any house fronting on the said open space to the enjoyment of the said open space at all times, or at any specified time or times, and may regulate the admission of such persons thereto on such terms and conditions in all respects as the trustees may think proper.

Any trustees so acting as aforesaid shall have the same power of making byelaws as that conferred by the fourth section of the Act passed in the twenty-sixth year of Her Majesty, chapter thirteen, intitled "An Act for the protection of certain garden or ornamental grounds in cities and boroughs upon the committee therein mentioned."

Where the freehold of any such open space as is referred to in this section, and the freehold of all or of the major part of the houses round such open space are vested in the same person or persons, the powers conferred by this section shall not be exercised without the consent of such person or persons.

3. The owner of any open space within the metropolis which is subject to rights of user for exercise and recreation (secured by covenant or otherwise) in the owners and occupiers (or of either of such classes) of any houses round or near the same may, with the consent (to be signified in manner herein-after appearing) of such owners and occupiers of houses, convey to the Metropolitan Board, or to the vestry or district board of the parish or district in which such open space or any part thereof is situate, the soil of the said open space in trust for the enjoyment of the public; and the owner or any person or persons in whom any term of years or other limited interest in such open space is vested may, with the like consent, grant or transfer to the Metropolitan Board or such

vestry or district board as aforesaid, in trust as aforesaid, any term of years or other limited interest in or any right or easement over such open space, or enter into any agreement with the Metropolitan Board or any such vestry or district board as aforesaid for the opening to the public of such open space, and the care and management thereof by such board or vestry either at all times or at any specified time or times without the transfer to such board or vestry of any interest in the soil of such open space.

The consent of such owners and occupiers of houses as aforesaid shall be held to have been given and signified if at a meeting of such persons summoned by at least one month's notice in writing (given as herein-after directed) a resolution shall have been passed by a majority of at least two thirds in number of the persons present at such meeting consenting to the conveyance, grant, or transfer of the said open space as aforesaid, or to such an agreement with the Metropolitan Board, vestry, or district board as aforesaid, and the owner shall be thereupon discharged from any liability to any person entitled to such right of user as aforesaid in respect of any act done in accordance with such resolution.

Notice of such meeting shall be given by leaving the same or sending the same through the post to every house, the owner or occupier of which is entitled to any right of user, and by inserting the same as an advertisement at least three times in any two or more London daily papers, and such notice shall state generally the object of the said meeting; and no such meeting shall be held between the first day of August in one year and the thirty-first day of January in the following year.

For the purposes of this section the owner of an open space shall be any person or persons in whom the soil of the open space is vested for an estate in possession during his or their life or lives or for any larger estate; the owner of a house shall include any person entitled to any term of years therein; and the occupier of a house shall be the person rated to the relief of the poor in respect of the said house.

4. The owner of any churchyard, cemetery, or burial ground situate within the metropolis, and closed for burials either under an order of Her Majesty the Queen in Council, or otherwise, may convey the soil of such churchyard, cemetery, or burial ground, or grant any term of years or other limited interest therein to or enter into any agreement with the Metropolitan Board or the vestry or district board of the parish or district in which such churchyard, cemetery, or burial ground, or any part thereof, is situate for the purpose of giving the public access to the said churchyard, cemetery, or

burial ground, and preserving the same as an open space accessible to the public, and under the control of such board or vestry, and for the purpose of improving and laying out the same.

5. The Metropolitan Board and the vestry or district board of the parish or district within which any open space, churchyard, cemetery, or burial ground, or any part thereof, is situate may, by agreement, and for valuable or nominal consideration by way of payment in gross or of rent, or otherwise, or without any consideration, take and hold the soil and freehold of, or any term of years or other limited estate or interest in, or any right or easement in or over any open space, churchyard, cemetery, or burial ground, and may, with reference to any open space, churchyard, cemetery, or burial ground, undertake the entire or partial care, management, and control thereof, whether any interest in the soil is transferred to the board or vestry or not, and may for the purposes aforesaid enter into any agreement with the persons authorised by this Act to agree with reference to any open space, churchyard, cemetery, or burial ground or with any other persons interested therein.

Any estate or interest in or control over any open space, churchyard, cemetery, or burial ground acquired by the Metropolitan Board, or any vestry or district board under the provisions of this Act, shall be held and administered by such board or vestry in trust to allow, and with a view to, the enjoyment by the public of such open space, churchyard, cemetery, or burial ground in an open condition, free from buildings and under proper control and regulation, and for no other purpose, but such Metropolitan Board, vestry, or district board shall not allow the playing of any games or sports therein; and the board or vestry shall maintain and keep the same in a good and decent state, and may inclose or keep the same inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, seat, and otherwise improve the same, and do all such works and things, and employ such officers and servants, as may be requisite for the purposes aforesaid, or any of them.

Provided that no board or vestry shall exercise any of the powers of management in this Act mentioned with reference to any consecrated ground, unless and until they are authorised so to do by the license or faculty in that behalf of the bishop of the diocese in which such consecrated ground is situate, which license or faculty may be granted by such bishop upon the application of the board or vestry, and may extend to the removal of any tombstone or monument, under such conditions and subject to such restrictions as to the bishop may seem fit.

6. The Metropolitan Board and any vestry or district board may, with reference to any open space, churchyard, cemetery, or burial ground in or over which it has acquired any estate, interest, or control under the provisions of this Act, make byelaws for the regulation thereof, and of the days and times of admission thereto, and the preservation of order and prevention of nuisances therein, and may by such byelaws impose penalties for the infringement thereof, and provide for the removal of any person infringing any such byelaw by any officer of the board or vestry or police constable.

Byelaws made under this Act shall be made in the same manner and subject to the same conditions as byelaws made by the Metropolitan Board or by a vestry or district board, as the case may be, under the Metropolitan Management Act, 1855.

7. The Metropolitan Board or any vestry or district board, and where an open space extends into two or more parishes or districts two or more vestries or district boards, either with or without the Metropolitan Board, may jointly carry out the provisions of this Act, and may enter into any agreement, on such terms as may be arranged between them, for so doing and for defraying the expenses of the execution of the Act, and the Metropolitan Board may defray the whole or any part of the expenses of the execution of this Act by any vestry or district board, and any vestry or district board may similarly defray the whole or any part of the expenses of the Metropolitan Board or, where an open space extends into two or more parishes or districts, of any other vestry or district board.

8. Where any open space, churchyard, cemetery, or burial ground, by virtue of any Act of Parliament or otherwise, is extra-parochial, or forms part of some parish other than that which surrounds the same, the vestry or district board acting for the parish surrounding the same may carry out, or may enter into agreement with any one or more vestries or district boards acting for any other parishes, on such terms as may be arranged between them, and may jointly carry out, the provisions of this Act, and shall have the same powers in every respect as if such open space, churchyard, cemetery, or burial ground were part of the parish or district of such vestry or district board.

9. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting an open space, churchyard, cemetery, or burial

ground shall, except with the consent of the body or person entitled thereto, be taken away or injuriously affected by anything done under this Act without compensation being made for the same; and such compensation shall be paid by the Metropolitan Board, vestry, or district board by which such estate, interest, or right is taken away or injuriously affected, and shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the provisions of the Lands Clauses Consolidation Act, 1845, and any Acts amending the same.

10. All expenses incurred under this Act by the Metropolitan Board or by any vestry or district board shall be defrayed out of the funds at their disposal respectively, or which they respectively are empowered to raise under the Metropolitan Management Act, 1855, and the several Acts amending the same; and such expenses shall be deemed to be expenses for which provision is made by such Acts.

11. This Act shall extend only to the metropolis, and shall not extend to the royal parks or to any land belonging to Her Majesty in right of her Crown or of her Duchy of Lancaster, or to any garden, ornamental ground, or ornamental land for the time being under the management of the Commissioners for the time being of Her Majesty's Works and Public Buildings or of the Commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any metropolitan common within the meaning of the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869.

12. The powers in this Act conferred on and in relation to the Metropolitan Board, vestries, and district boards shall in the city of London be exercised by and have relation to the corporation, who shall defray, out of the metage of grain duty or otherwise, all the expenses caused by or connected with the execution of such powers by them; and any byelaws made by the corporation for the regulation of any open space acquired under the powers of this Act shall be made and allowed in manner prescribed by the Corporation of London (Open Spaces) Act, 1878.

13. This Act may be cited as the Metropolitan Open Spaces Act, 1881; and this Act and the Metropolitan Open Spaces Act, 1877, may together be cited as the Metropolitan Open Spaces Acts, 1877 and 1881.

CHAP. 35.

Coroners (Ireland).

ABSTRACT OF THE ENACTMENTS.

1. *Repeal.*
2. *Qualification of coroner.*
3. *Remuneration of coroner.*
4. *Polling to continue for one day.*
5. *Payment of witnesses.*
6. *Jury on inquest.*
7. *Bail in cases of manslaughter.*
8. *Recognizances.*
9. *Depositions.*
10. *Extent of Act.*

SCHEDULE.

An Act to amend the Law relating to Coroners in Ireland.

(11th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. That from and after the passing of this Act the several parts of the Act herein-after mentioned shall be and the same are hereby repealed; that is to say, so much of an Act passed in the ninth and tenth years of Her present Majesty, intituled "An Act to amend the laws relating to the office of coroner and the expenses of inquests in Ireland," as relates to the election of coroners for counties continuing for two days, and their property qualification, and the payment of such coroners for counties, and so much of the said Act and the Schedule C. thereto as relates to the payment of poor witnesses attending at inquests.

2. From and after the passing of this Act, no person shall be elected or chosen to the office of coroner unless at the time of being so elected or chosen he is qualified as follows; that is to say,

- (a.) Is duly qualified to practise medicine or surgery, and registered as such under the Medical Act of 1858, or any Act amending the same; or
- (b.) Is a barrister-at-law; or
- (c.) Is a solicitor of the Supreme Court of Judicature in Ireland; or
- (d.) Is a justice of the peace of five years standing.

Provided that no coroner, being such registered medical practitioner as aforesaid, shall hold an inquisition on the dead body of

any person, on whom he shall have been in professional attendance within one month before the death of such person.

3. On and after the first day of November one thousand eight hundred and eighty-one, there shall be paid to every coroner, in lieu of the fees and allowances which, if this Act had not passed, he would have been entitled to receive, an annual salary, equal to the average amount of the fees upon inquests held by him or his predecessor in said office during the five years last past, calculated at not less than two pounds sterling, for each inquest held by him or his predecessor during said period: Provided always, that the treasurer of each county or borough and borough respectively shall pay out of the county rates or borough fund such salary to every such coroner half-yearly; and whenever, from death or removal, any coroner shall not be entitled to a salary for the whole of a half year, a proportionate part of the salary shall be paid him, or, in case of his death, it shall be paid to his personal representative: Provided that nothing herein contained shall in any manner take away, alter, or deprive any such coroner of the right to be repaid out of the county rates or borough fund the expenses and disbursements which may have been made by him on the holding of any inquest: And provided always, that every county coroner shall also be paid mileage for each mile travelled, going to and returning from each inquest, at the rate of sixpence per mile, which he may have travelled in order to hold such inquest: Provided also, that when upon the death, illness, incapacity, or removal of any such coroner, the coroner of the adjoining district, in the same county, who shall be called upon to act as coroner in said vacant district, shall, for each inquest held by him in said district, be paid a sum of two pounds sterling, which the grand jury of such county

wherein such vacancy has taken place are hereby directed to pay out of the county rates to all coroners discharging such extra duties.

4. From and after the passing of this Act, so much of the Act ninth and tenth Victoria, chapter thirty-seven, as authorises the polling at elections for coroners to continue for two days shall be and the same is hereby repealed, and such polling shall continue for one day only.

5. From and after the passing of this Act, it shall and may be lawful for any coroner or two justices of the peace, by whom an inquest is held in Ireland, if he or they shall so think fit, to pay to any poor witness, for each day of attendance at such inquest, any sum not exceeding two shillings per day, as shall seem just and reasonable, and to pay any sum, not exceeding five shillings, as shall be reasonable for the removal of any dead body from the place where such dead body was found to the house or building in which an inquest thereon is intended to be held.

6. In case no twelve of the jurors who may be sworn upon a coroner's inquest shall agree and return a verdict within such reasonable time as the coroner or the magistrates before whom such inquest is being held shall determine, such coroner or magistrates shall then be at liberty, and are hereby authorised to discharge such jury, and upon their discharge to proceed anew, if he or they shall so think fit, to have another jury summoned and sworn to hold an inquest (none of the former jurors to be eligible to serve upon said inquest), and obtain the attendance of witnesses thereat, as in manner provided for the holding of inquests.

7. In every case in which a coroner's jury shall have found a verdict of manslaughter

against any person or persons, it shall be lawful for the coroner or two justices of the peace before whom the inquest was taken to accept bail, if he or they shall think fit, with good and sufficient sureties for the appearance of the person or persons so charged with the offence of manslaughter at the next assize and general gaol delivery to be holden in and for said county within which such inquest was taken, and thereupon such person or persons, if in the custody of any officer, or in a gaol under a warrant of commitment issued by such coroner or justices of the peace, shall be discharged therefrom.

8. In every case in which any coroner or justices of the peace shall admit any person to bail, he or they shall cause recognizances to be taken in the form given in the schedule of this Act, and shall, without unnecessary delay, return such recognizances to the clerk of crown for such county, and such coroner or justices of the peace shall be entitled to such fees and charges as the clerks of petty sessions are by law entitled to on admitting persons charged to bail.

9. At any time after all the depositions of witnesses at any inquest shall have been taken, every person against whom any coroner's jury may have found a verdict of murder or manslaughter shall be entitled to have, from the coroner or from the person having custody of the same, copies of the depositions on which such verdict shall have been found, on payment of a reasonable sum, not exceeding the rate of twopence for every folio of ninety words.

10. This Act shall extend to Ireland only, and shall not include the city of Dublin.

SCHEDULE.

Be it remembered, that, on the _____ day
of _____ in the year of our Lord
A.B. of [farmer], *L.M.* of [grocer],
and *N.O.* of [butcher], came before me
[or us], one of Her Majesty's coroners [or two
of Her Majesty's justices of the peace] for the
[county or borough] of _____, and severally
acknowledged themselves to owe to our Lady
the Queen the several sums following; that is
to say, the said *A.B.* the sum of _____ and
the said *L.M.* and *N.O.* the sum of _____
each, of good and lawful money of Great

Britain, to be made and levied of their goods
and chattels, lands and tenements respectively,
to the use of our said Lady the Queen, her
heirs and successors, if the said *A.B.* fail to
perform the condition indorsed.

Taken and acknowledged the day and year
first above mentioned, at _____, before me
[or us],

J.S. SEAL.
Coroner [or two justices of the peace]
for the [county or borough] of _____.

CONDITION INDORSED.

The condition of the within recognizance is such, that whereas a verdict of manslaughter has been found against the said *A.B.* by a jury impannelled to inquire how and by what means came by [his] death: If, therefore, the said *A.B.* shall appear at the next court of oyer and terminer and general gaol delivery to be holden in and for the [county] of _____, and

there surrender himself into the custody of the keeper of the gaol there, and plead to such inquisition, or such other indictment as may be preferred against him, and to take his trial upon same, and not depart the said court without leave, then the said recognizance shall be void, or else the same shall stand in full force and virtue.

CHAP. 36.

British Honduras (Court of Appeal) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Her Majesty may constitute the Supreme Court of Judicature of Jamaica a Court of Appeal from the Supreme Court of Judicature of British Honduras.*
2. *Orders of Appeal Court to be enforced by Supreme Court of British Honduras.*
3. *Short title.*

An Act to authorise the establishment of a Court of Appeal for Her Majesty's Colony of British Honduras.

(11th August 1881.)

WHEREAS the Legislative Council of Her Majesty's Colony of British Honduras is desirous, and the Legislative Council of Her Majesty's Island of Jamaica is willing, that an appeal should be provided from the decisions of the Supreme Court of Judicature of British Honduras to the Supreme Court of Judicature of Jamaica, but effectual provision for that purpose cannot be made without the authority of Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for Her Majesty by any Order, to be made by her with the advice of Her Privy Council, to constitute the Supreme Court of Judicature of the Island of Jamaica a Court of Appeal for hearing and determining appeals from the judgments, decrees, orders, sentences, and decisions of the Supreme Court of Judicature of the Colony of British Honduras, and from and after the proclamation of such Order in Council in each of the said

colonies, or from and after such subsequent date as may be appointed by such Order, any person or persons may appeal from any judgment, decree, order, sentence, or decision of the Supreme Court of Judicature of British Honduras to the Supreme Court of Judicature of Jamaica, and such last-mentioned court shall have jurisdiction to hear and determine such appeals in such manner, within such time, and under and subject to such rules and limitations as Her Majesty by the same Order or by any other Order or Orders in Council shall prescribe or appoint, or, if Her Majesty by any such Order shall so direct, as the same court, with the approval of one of Her Majesty's Principal Secretaries of State, shall from time to time prescribe or appoint.

2. The Supreme Court of Judicature of British Honduras shall, in all cases of appeal to the Supreme Court of Judicature of Jamaica under or by virtue of any such Order in Council as aforesaid, conform to and execute or cause to be executed such judgments and orders as the Supreme Court of Judicature of Jamaica shall make in such manner as if the same had been judgments or orders of the Supreme Court of Judicature of British Honduras.

3. This Act may be cited as the British Honduras (Court of Appeal) Act, 1881.

CHAP. 37.

Alkali, &c. Works Regulation Act, 1881.

ABSTRACT OF THE ENACTMENTS.

PRELIMINARY.

1. *Short title.*
2. *Commencement of Act.*

PART I.

Alkali Works and Alkali Waste.

3. *Condensation of muriatic and other acid gases in alkali works.*
4. *Best practicable means to be used for preventing discharge of noxious and offensive gases in alkali works.*
5. *Acid drainage and alkali waste to be kept apart.*
6. *Deposit or discharge of alkali waste.*
7. *Prevention of nuisance from alkali waste already deposited or discharged.*

PART II.

Sulphuric Acid Works and other specified Works.

8. *Condensation of acid gases in sulphuric acid works.*
9. *Best practicable means to be used for preventing discharge of noxious and offensive gases in scheduled works.*
10. *Provisional Order to prevent discharge of certain gases in salt works.*

PART III.

(i.) *Registration of Works.*

11. *Registration of works, and stamp duty.*
12. *Certificate of inspector prior to registration of new works.*
13. *Supplemental provisions as to duties.*

(ii.) *Inspection.*

14. *Appointment of inspectors.*
15. *Disqualification of certain persons for inspectors.*
16. *Powers of inspectors.*
17. *Facilities for inspection.*
18. *Annual report to Local Government Board.*
19. *Additional inspector on application of sanitary authorities.*

(iii.) *Special Rules.*

20. *Power of owners of works to make special rules.*

(iv.) *Procedure.*

21. *Provision as to calculation of acid.*
22. *Recovery of fines for offences against Act in county court.*
23. *Further provisions as to recovery of fines in county court.*
24. *Application of fines.*
25. *Discharge of owner on conviction of actual offender.*
26. *Service of notices.*
27. *Complaint by sanitary authority in cases of nuisance.*
28. *Actions in case of contributory nuisance.*

(v.) *Definitions; Repeal; Saving.*

29. *Interpretation of terms.*
30. *Repeal of 26 & 27 Vict. c. 124., 31 & 32 Vict. c. 36., and 37 & 38 Vict. c. 43.*
31. *Saving as to general law.*

SCHEDULE.

An Act to consolidate the Alkali Acts, 1863 and 1874, and to make further provision for regulating Alkali and certain other works in which noxious or offensive gases are evolved.

(11th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PRELIMINARY.

1. This Act may be cited as the Alkali, &c. Works Regulation Act, 1881.

2. This Act shall (save as otherwise provided in this Act) come into operation on the first day of January 1882, which date is herein-after referred to as the commencement of this Act.

PART I.

Alkali Works and Alkali Waste.

3. Every alkali work shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination, or from that of some other inspector—

(a.) Of the muriatic acid gas evolved in such work, to the extent of ninety-five per centum, and to such an extent that in each cubic foot of air, smoke, or chimney gases, escaping from the works into the atmosphere, there is not contained more than one-fifth part of a grain of muriatic acid.

(b.) Of the acid gases of sulphur and nitrogen which are evolved in the process of manufacturing sulphuric acid or sulphates in the work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke, or gases, escaping into the chimney or into the atmosphere, does not exceed what is equivalent to four grains of sulphuric anhydride.

The owner of any alkali work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

4. In addition to the condensation of acid gases as aforesaid, the owner of every alkali work shall use the best practicable means for preventing the discharge into the atmosphere

of all noxious gases and of all offensive gases evolved in such work, or for rendering such gases harmless and inoffensive when discharged, subject to the qualification that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air, smoke, or gases, where that amount does not exceed the amount limited by the last preceding section.

If the owner of any alkali work fails, in the opinion of the court having cognisance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

5. Every work in which acid is produced or used shall be carried on in such manner that the acid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance.

The owner of any work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off the acid produced in such work into the sea or into any river or water-course into which such acid can be carried without contravention of the Rivers Pollution Prevention Act, 1876; and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act.

Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section.

6. Alkali waste shall not be deposited or discharged without the best practicable means being used for effectually preventing any nuisance arising therefrom.

Any person who causes or knowingly permits any alkali waste to be deposited or discharged in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

7. Where alkali waste has been deposited or discharged, either before or after the commencement of this Act, and complaint is made to the chief inspector that a nuisance is occasioned thereby, the chief inspector, if satisfied of the existence of the nuisance, and that it is within the power of the owner or occupier of the land to abate it, shall serve a notice on such owner or occupier requiring him to abate the nuisance; and if such owner or occupier fails to use the best practicable and reasonably available means for the abatement thereof he shall be liable to a fine not exceeding twenty pounds, and if he does not proceed to use such means within such time as shall be limited by the court inflicting such fine then he shall be liable to a further penalty of five pounds per day from the expiration of the time so limited.

PART II.

Sulphuric Acid Works and other specified Works.

8. Every sulphuric acid work as defined in the schedule to this Act shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination or from that of some other inspector, of the acid gases of sulphur and nitrogen which are evolved in the process of the manufacture of sulphuric acid in such work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke, or gases escaping into the chimney or into the atmosphere does not exceed what is equivalent to four grains of sulphuric anhydride.

The owner of any sulphuric acid work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

9. The owner of any work specified in the schedule to this Act (herein-after referred to as a scheduled work) shall use the best practicable means for preventing the discharge into the atmosphere of all noxious gases and of all offensive gases evolved in such work, or for

rendering such gases harmless and inoffensive when discharged, subject to the qualification, in the case of sulphuric acid works, that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air smoke or gases, where that amount does not exceed the amount limited by the last preceding section.

If the owner of any such work fails, in the opinion of the court having cognisance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

10. An inspector may from time to time inquire whether, in any works in which the extraction of salt from brine is carried on, herein-after called salt works, means can be adopted at a reasonable expense for preventing the discharge from the furnaces or chimneys of such works into the atmosphere of sulphurous and muriatic acid gases evolved in such works, or either of such gases, or for rendering such gases, or either of them, harmless or inoffensive when discharged; also whether in any works in which aluminous deposits are treated for the purpose of making cement, herein-after called cement works, such means as aforesaid can be adopted with respect to the noxious or offensive gases evolved from such works.

Where it appears to the Local Government Board that such means can be adopted at a reasonable expense the Board may from time to time by order require the owners of such works to adopt the best practicable means for the purpose, and may by the order limit the amount or proportion, in the case of salt works, of sulphurous or muriatic acid gas, and in the case of cement works of any noxious or offensive gas, which is to be permitted to escape from such works into the chimney or into the atmosphere, and may also by the order extend to such works such provisions of this Act relating to scheduled works as they see fit.

An order made under this section shall be provisional only and shall not be of any validity until confirmed by Parliament, but when so confirmed shall have full effect, with such modifications as may be made therein by Parliament; and the expression "this Act" when used in this Act shall be deemed to include an order so confirmed, so far as is consistent with the tenor of that order.

The Board shall take such steps as they may think fit for giving notice to persons interested of the provisions of any order made by them

under this section before any Bill for confirming the same is introduced into Parliament.

An order made under this section may impose fines for a breach of its provisions of like amount as any fines imposed by this Act for offences against this Act.

PART III.

(i.) *Registration of Works.*

- 11.—(1.) An alkali work or a work to which Part II. of this Act applies shall not, after the first day of April 1882, be carried on unless it is certified to be registered.
- (2.) The work shall be registered in a register containing the prescribed particulars, and the register shall be conducted and the certificates issued in the prescribed manner.
- (3.) The owner of an alkali work or of a work required to be registered shall in the month of January or February in every year apply for a certificate of registration in the prescribed manner, and on such application and compliance with the conditions as to registration the certificate shall be issued, and shall be in force for one year from the first day of April following the said application.
- (4.) The owner of an alkali work or of a work required to be registered erected after the commencement of this Act shall before commencing any manufacture or process in such work apply for such certificate in the prescribed manner, and on such application and compliance with the conditions as to registration the certificate shall be issued as soon as may be, and shall be in force until the next first day of April.

There shall be charged in respect of every such certificate, in the case of an alkali work, the duty of five pounds; and in the case of a work required to be registered, not being an alkali work, the duty of three pounds.

- (5.) Written notice of any change which occurs in the ownership of a work or in the other particulars stated in the register shall within one month after such change be sent by the owner to an inspector, and the register and the certificate shall be altered accordingly in the prescribed manner without charge and without the issue of a new certificate. If such notice is not sent as so required the work shall not be deemed to be certified to be registered.
- (6.) The owner of a work which is carried on in contravention of this section shall be deemed guilty of an offence against this

Act, and shall be liable to a fine not exceeding five pounds for every day during which it is so carried on.

12. An alkali work or a scheduled work, erected after the commencement of this Act, or which has been closed for a period of twelve months, shall not be registered under this Act unless the work is furnished with such appliances as at the time of registration appear to the chief inspector after his own examination, or that of an inspector, or in case of difference to the central authority, to be necessary in order to enable the work to be carried on in accordance with such requirements of this Act as for the time being apply to such work.

13. The duties charged in respect of a certificate of registration under this Act shall be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forged fraudulent dies and other offences in connexion with stamp duties, shall apply accordingly; and for the purpose of the said duties the Commissioners of Inland Revenue shall issue stamped forms of certificate, and the Commissioners may issue the same at any time after the passing of this Act.

(ii.) *Inspection.*

14. The Local Government Board shall at any time after the passing of this Act, and from time to time, with the approval of the Commissioners of Her Majesty's Treasury as to numbers and salaries or remuneration, appoint such inspectors (under whatever title they from time to time fix) as the Board think necessary for the execution of this Act, and may assign them their duties and award them their salaries or remuneration, and shall constitute a chief inspector, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors.

Notice of the appointment of every such inspector shall be published in the London Gazette, and a copy of the Gazette shall be evidence of the appointment.

The salaries or remuneration of the inspectors, and such expenses of the execution of this Act as the Commissioners of Her Majesty's Treasury may sanction, shall be paid out of moneys provided by Parliament.

The inspector appointed before the commencement of this Act under the Alkali Acts 1863 and 1874, shall be deemed to be the first chief inspector under this Act, and the sub-inspectors appointed under those Acts before

the commencement of this Act shall be deemed to be inspectors appointed under this Act. A person holding the office of chief inspector (other than the person at the commencement of this Act discharging the duties thereof) or inspector shall not be employed in any other work except by or with the sanction of the authority appointing him to such office.

15. A person who acts or practices as a land agent, or who is engaged or interested directly or indirectly in any work to which this Act applies, or in any patent for any process or apparatus carried on or used in any such work, or in any process or apparatus connected with the condensation of acid gases, or with the treatment of alkali waste, or with preventing the discharge into the atmosphere or rendering harmless or inoffensive any noxious or offensive gas, or otherwise with any of the matters dealt with by this Act, or who is employed in or about or in connexion with any work to which this Act applies, or in any other chemical work for gain, shall be disqualified to act as an inspector under this Act.

16. For the purpose of the execution of this Act, an inspector may at all reasonable times by day and night, without giving previous notice, but so as not to interrupt the process of the manufacture, enter and inspect any work to which this Act applies, and examine any process causing the evolution of any noxious or offensive gas, and any apparatus for condensing any such gas, or otherwise preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, and may ascertain the quantity of gas discharged into the atmosphere, condensed, or otherwise dealt with; and may enter and inspect any place where alkali waste is treated or deposited, or where any liquid containing acid is likely to come into contact with alkali waste; and generally may inquire into all matters and processes which tend to show compliance or non-compliance with such of the provisions of this Act as are for the time being applicable to the work or place entered, or which seem necessary or proper for the execution of his duties under this Act.

An inspector may, but so as not to interrupt the process of the manufacture, apply any tests and make any experiments he may think proper for the purpose of the execution of his duties under this Act.

17. The owner of any work to which this Act applies shall, on the demand of the chief inspector, furnish him within a reasonable

time with a plan, to be kept secret, of those parts of such work in which any process causing the evolution of any noxious or offensive gas, or any process for the condensation of such gas or preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, is carried on.

The owner of every such work and his agents shall render to every inspector all necessary facilities for an entry inspection examination and testing in pursuance of this Act.

Every owner of a work in which such facilities are not afforded to an inspector as are required by this Act, or in which an inspector is obstructed in the execution of his duty under this Act, and every person wilfully obstructing an inspector in the execution of his duty under this Act, shall be deemed guilty of an offence against this Act, and shall be liable to a fine not exceeding ten pounds.

18. The chief inspector shall on or before the first day of March in every year make a report in writing to the Local Government Board of the proceedings of himself and of the other inspectors under this Act, who shall furnish him with a detailed account of the number of inspections of works in their districts, and the recorded escapes of acid gases from such works during the preceding year, and a copy of such report shall be laid before both Houses of Parliament.

19. If any sanitary authority or authorities apply to the central authority for an additional inspector under this Act, and undertake to pay a proportion of his salary or remuneration, not being less than one half, out of any rate or rates leviable by such authority or authorities (which undertaking such authority or authorities are hereby authorised to give and to carry into effect), the Local Government Board may (if they see fit) from time to time, with the sanction of the Commissioners of Her Majesty's Treasury, appoint an additional inspector under this Act, to reside within a convenient distance of the works he is required to inspect; and such inspector shall have the same powers and be subject to the same power of removal and the same regulations and liabilities as other inspectors under this Act.

The proportion of salary or remuneration aforesaid shall be paid at the prescribed time or times into Her Majesty's Exchequer, and in the case of failure on the part of any sanitary authority to pay any sum payable by them in pursuance of this section, the same may be recovered by action in any court of competent jurisdiction.

(iii.) *Special Rules.*

20. The owner of an alkali work or of a scheduled work may, with the sanction of the central authority, make, and when made, alter add to and repeal special rules for the guidance of his workmen who are employed in any process causing the evolution of any noxious or offensive gas, or whose duty it is to attend to the apparatus used in the condensation of that gas, or for preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless and inoffensive when discharged, and may annex fines to any violation of such rules, so that the fine for any offence do not exceed two pounds.

A printed copy of the special rules in force under this section in any work shall be given by the owner of that work to every person working or employed in or about that work who is affected thereby.

Any fine incurred under this Act in respect of an offence against a special rule may be recovered summarily.

(iv.) *Procedure.*

21. In calculating the proportion of acid to a cubic foot of air, smoke, or gases, for the purposes of this Act, such air, smoke, or gases, shall be calculated at the temperature of sixty degrees of Fahrenheit's thermometer, and at a barometric pressure of thirty inches.

22. The following regulations are hereby enacted with respect to the recovery of fines for offences other than offences against a special rule:

Every such fine shall be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed:

The action shall be brought, with the sanction of the central authority, by the chief inspector, or by such other inspector as the Local Government Board may in any particular case direct, within three months after the commission of the offence, and for the purposes of such action the fine shall be deemed to be a debt due to such inspector:

The plaintiff in any action for a fine under this Act shall be presumed to be an inspector authorised under this Act to bring the action, until the contrary is proved by the defendant:

The court may, on the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such remuneration as the court thinks just; and the amount so awarded shall be deemed to be costs in the action:

If either party in any action under this Act feels aggrieved by the decision of the court in point of law, or on the merits or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice:

The appeal shall be in the form of a special case to be agreed on by both parties or their solicitors, and if they cannot agree, to be settled by the judge of the county court on the application of the parties or their solicitors:

The court of appeal may draw any inference from the facts stated in the case that a jury might draw from facts stated by witnesses:

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the High Court of Justice, or any division or judge thereof, on such appeals, shall apply to an action for a fine under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court:

Within the city of London and the liberties thereof the sheriff's court, established by a Local Act passed in the eleventh year of the reign of Her present Majesty, chapter seventy-one, intituled An Act for the more easy recovery of small debts and demands within the City of London and the liberties thereof, shall be deemed to be the county court for the purposes of this Act:

In Scotland the court of the sheriff or sheriff substitute of the county in which the offence is committed shall be the county court for the purposes of this Act, and may award costs to either party, and may sentence the offender to imprisonment for any period not exceeding six months, unless the fine and costs be previously paid; and any decision or sentence of such sheriff or sheriff substitute shall be subject to review and appeal according to law:

In Ireland such fines as are in this section mentioned may be recovered by civil bill, in the manner and with the appeal directed by an Act passed in the fourteenth and fifteenth years of Her present Majesty, chapter fifty-seven, or any Act or Acts amending the law relating to civil bills.

23. In any proceeding under this Act in

relation to a fine for an offence other than an offence against a special rule—

- (a.) It shall be sufficient to allege that any work is a work to which this Act applies, without more; and
- (b.) It shall be sufficient to state the name of the registered or ostensible owner of the work, or the title of the firm by which the employer of persons in such work is usually known.

A person shall not be subject to a fine under this Act for more than one offence in respect of the same work or place in respect of any one day.

Not less than twenty-one days before the hearing of any proceeding against an owner to recover a fine under this Act for failing to secure the condensation of any gas to the satisfaction of the chief inspector, or for failing to use the best practicable means as required by this Act, an inspector shall serve on the owner proceeded against a notice in writing stating, as the case requires, either the facts on which such chief inspector founds his opinion, or the means which such owner has failed to use, and the means which, in the chief inspector's opinion, would suffice, and shall produce a copy of such notice before the court having cognisance of the matter.

A person shall not be liable under this Act to an increased fine in respect of a second offence, or in respect of a third or any subsequent offence, unless a fine has been recovered within the preceding twelve months against such person for the first offence, or for the second or other offence, as the case may be.

24. All fines recovered under this Act, except in respect of offences against a special rule, shall be paid into the receipt of Her Majesty's Exchequer.

25. The owner of a work in which an offence under this Act other than an offence against a special rule has been proved to have been committed shall in every case be deemed to have committed the offence, and shall be liable to pay the fine, unless he proves to the satisfaction of the court before which any proceeding is instituted to recover such fine, that he has used due diligence to comply with and to enforce the execution of this Act, and that the offence in question was committed by some agent servant or workman, whom he shall charge by name as the actual offender, without his knowledge consent or connivance; in which case such agent servant or workman shall be liable to pay the fine, and proceedings may be taken against him for the recovery thereof and of the costs of all proceedings which may be taken either against himself or against the owner under this Act:

Provided that it shall be lawful for the inspector to proceed in the first instance against the person whom he believes to be the actual offender, without first proceeding against the owner, in any case in which it is made to appear to the satisfaction of such inspector that the owner has used all due diligence to comply with and to enforce the execution of this Act, and that the offence has been committed by the person whom he may charge therewith without the knowledge consent or connivance of the owner, and in contravention of his orders.

26. Any notice summons or other document under this Act, may be in writing or print, or partly in writing and partly in print.

Any notice summons or document required or authorised for the purposes of this Act to be delivered to or served on or sent to the owner of any work, may be served by delivering the same to the owner, or at his residence or works; it may also be served or sent by post by a prepaid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that it was properly addressed and put into the post; and the same shall be deemed to be properly addressed if addressed to the registered address of an owner, or, when required to be served on or sent to the owner of any works, if addressed to the owner of the works at the works, with the addition of the proper postal address, but without naming the person who is the owner.

27. Where it appears to any sanitary authority, on the written representation of any of their officers, or of any ten inhabitants of their district, that any work (either within or without the district) to which this Act applies is carried on in contravention of this Act, or that any alkali waste is deposited (either within or without the district) in contravention of this Act, and that a nuisance is occasioned by such contravention to any of the inhabitants of their district, such authority may complain to the central authority, who shall make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by an inspector as they think just.

The sanitary authority complaining shall, if so required by the central authority, pay the expense of any such inquiry, and may pay the same out of the fund or rate applicable to the general expenses of such authority.

The expression "sanitary authority" in this section includes as regards the Metropolis, except the City of London, any vestry or

district board elected under the Metropolis Management Act, 1855, also any local board of health, not being an urban sanitary authority within the meaning of the Public Health Act, 1875, and as regards the City of London shall mean the Commissioners of Sewers of the said city.

28. Where a nuisance arising from any noxious or offensive gas or gases is wholly or partially caused by the acts or defaults of several persons, any person injured by such nuisance may proceed against any one or more of such persons, and may recover damages from each person made a defendant in proportion to the extent of the contribution of such defendant to the nuisance, notwithstanding that the act or default of such defendant would not separately have caused a nuisance. This section shall not apply to any defendant who can produce a certificate from the chief inspector that in the works of such defendant the requirements of this Act have been complied with and were complied with when the nuisance arose.

(v.) *Definitions; Repeal; Saving.*

29. In this Act, unless the context otherwise requires—

“Alkali work” means every work for the manufacture of alkali, sulphate of soda, or sulphate of potash, in which muriatic acid gas is evolved, and for the purpose of this definition the formation of any sulphate in the treatment of copper ores by common salt or other chlorides shall be deemed to be a manufacture of sulphate of soda.

“Noxious or offensive gas” does not include sulphurous acid arising from the combustion of coal.

“Owner” means the lessee, occupier, or any other person carrying on any work to which this Act applies.

“Prescribed” means prescribed from time

to time by the Local Government Board, and the “Local Government Board” means the Local Government Board established by the Local Government Board Act, 1871.

“Central authority” means as regards England the said Local Government Board, as regards Ireland the Local Government Board for Ireland, and as regards Scotland one of Her Majesty's Principal Secretaries of State.

“Sanitary authority” means any local authority entrusted with the execution of the Public Health Act.

“The Public Health Act” means, as regards England, the Public Health Act 1875; and as regards Scotland, the Public Health (Scotland) Act 1867; and as regards Ireland, the Public Health (Ireland) Act 1878.

“Person” includes a corporation.

30. The following Acts, that is to say—

The Alkali Act 1863, (26 & 27 Vict. c. 124),

The Act to make perpetual the Alkali Act 1863, (31 & 32 Vict. c. 36), and

The Alkali Act 1874, (37 & 38 Vict. c. 43),

are hereby repealed without prejudice to anything done or suffered before the commencement of this Act, or to the recovery of any penalty incurred before or proceeding pending at the commencement of this Act; and any such penalty or proceeding may be recovered or continued as if this Act had not been passed.

31. Nothing in this Act shall legalise any act or default that would, but for this Act, be deemed to be a nuisance, or otherwise be contrary to law, or deprive any person of any remedy by action indictment or otherwise, to which he would have been entitled if this Act had not passed.

SCHEDULE.

List of Works.

- (1.) Sulphuric acid works, that is to say, any works in which the manufacture of sulphuric acid is carried on (not being alkali works within the meaning of the foregoing Act, and not being works in which the manufacture of sulphuric acid is carried on in conjunction with the extraction of copper or other metals from ore);
- (2.) Chemical manure works, that is to say, any works in which the manufacture of chemical manure is carried on;
- (3.) Gas liquor works, that is to say, any

- works in which gas liquor is used in any manufacturing process;
- (4.) Nitric acid works, that is to say, any works in which the manufacture of nitric acid is carried on;
- (5.) Sulphate of ammonia works and muriate of ammonia works, that is to say, any works in which the manufacture of sulphate of ammonia or of muriate of ammonia is carried on; and
- (6.) Chlorine works or works in which chlorine, bleaching powder, or bleaching liquor is made.

CHAP. 38.

Public Works Loans Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

PART I.

Grant of Money for Public Works Loan Commissioners.

2. *Grant of 4,000,000l. for Public Works loans during the period ending 30th June 1882.*

PART II.

Grant of Money for Public Works Commissioners, Ireland.

3. *Grant of 1,100,000l. for loan by Commissioners of Public Works in Ireland during the period ending 30th June 1882.*

PART III.

Remission, &c. of Loans.

4. *Remission of certain interest on loan to Tralee Harbour and Canal Commissioners.*
5. *Remission of sum expended on the Monivea drainage works.*
6. *Provision as to loan to Wicklow Harbour Commissioners.*

Amendment of Acts.

7. *Amendment of 38 & 39 Vict. c. 89. s. 22. as to rate of interest for loan.*
8. *Expenses of ascertaining (under 38 & 39 Vict. c. 89. s. 36.) that loans advanced by the Public Works Loans Commissioners have been properly applied.*
9. *Application of surplus balances of loans made by the Public Works Loans Commissioners.*
10. *Loan of 20,000l. for erecting a lighthouse on Minicoy Island.*
11. *Explanation of Acts as to loans for houses for labouring classes in Ireland.*
12. *Explanation of Acts relating to Commissioners of Public Works in Ireland as to date of advance.*
13. *Removal of doubt as to construction of 43 & 44 Vict. c. cccv. respecting Mulkear drainage district board.*
14. *Confirmation of loans mentioned in 43 Vict. c. 4.*

PART IV.

Grant of Money for Irish Land Commission.

15. *Grant of 1,400,000l. to Land Commission.*

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland; and for other purposes relating to Loans by those Commissioners.

(22d August 1881.)

WHEREAS it is expedient to grant money for the purpose of loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland:

And whereas it is expedient to authorise the remission of certain sums due in respect of loans granted by the said Commissioners:

Be it therefore enacted by the Queen's most

Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Works Loans Act, 1881.

PART I.

Grant of Money for Public Works Loan Commissioners.

2. For the purpose of loans by the Public Works Loan Commissioners,—

(1.) Any sum or sums, not exceeding in the whole the sum of four million pounds, may be issued out of the Consolidated

Fund of the United Kingdom, or the growing produce thereof, in manner provided by the Public Works Loans Act, 1875, as amended by the Public Works Loans Act, 1879; and

- (2.) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the thirtieth day of June one thousand eight hundred and eighty-two, or on any earlier day at which a further Act granting money for the purpose of the said loans comes into operation.

The Treasury may, in the manner and subject to the limitations provided by the Public Works Loans Act, 1875, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART II.

Grant of Money for Public Works Commissioners, Ireland.

3. For the purpose of loans by the Commissioners of Public Works in Ireland,—

- (1.) Any sum or sums, not exceeding in the whole one million one hundred thousand pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by Part Two of the Public Works Loans (Ireland) Act, 1877, as amended by the Public Works Loans Act, 1879; and

- (2.) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the thirtieth day of June one thousand eight hundred and eighty-two, or on any earlier day on which a further Act authorising the issue of money for those loans comes into operation.

The Treasury may, in the manner and subject to the limitations provided by Part Two of the Public Works Loans (Ireland) Act, 1877, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART III.

Remission, &c. of Loans.

4. Whereas the Public Works Loan Commissioners in the year 1832 advanced to the Tralee Harbour and Canal Commissioners, on the security of the harbour and ship canal at Tralee, and the tolls thereof, a sum of six thousand pounds, to be repaid with interest at the rate of five per cent. per annum:

And whereas on account of such loan there remained due in the month of March one thousand eight hundred and eighty the sum of five thousand four hundred pounds in respect of principal and eleven thousand and fifty-four pounds nineteen shillings and twopence in respect of arrears of interest, and the net receipts from the said harbour and canal and tolls were insufficient to keep down the interest:

And whereas it was then proposed to make improvements in the harbour at Tralee and to make a railway to such harbour, and thereupon it was arranged by the divers persons interested, with the Public Works Loan Commissioners, and the Treasury, subject to the sanction of Parliament, that the Public Works Loan Commissioners should sell the said canal to the Tralee and Fenit Railway Company for the sum of eight thousand pounds whereof the sum of five thousand four hundred pounds should be forthwith paid to the Exchequer, and that there should be charged as a first charge upon the said canal and the proposed railway the remaining sum of two thousand six hundred pounds with interest at five per cent. per annum, and that the residue of the said arrears of interest should be remitted:

And whereas in pursuance of the said arrangement the said sum of five thousand four hundred pounds, was paid to the Exchequer:

And whereas by the Pier and Harbour Orders Confirmation Act, 1880, provision was made for the said improvements in Tralee Harbour, and by an Act of the session of the forty-third and forty-fourth years of the reign of Her present Majesty, chapter one hundred and seventy-nine, intituled "An Act for making a railway from Tralee to Fenit, in the county of Kerry, and for other purposes," the sum of two thousand six hundred pounds with interest at the rate of five per cent. per annum was charged upon the railway and canal therein mentioned in favour of the Public Works Loan Commissioners:

And whereas it is expedient to carry into effect the residue of the said agreement by authorising the Public Works Loan Commissioners to remit the residue of the said arrears of interest, be it therefore enacted that—

The Public Works Loan Commissioners may remit the arrears of interest amounting to the

sum of eight thousand four hundred and fifty-four pounds nineteen shillings and twopence due in respect of the above-mentioned loan, and the amount so remitted shall be deemed to be a free grant by Parliament.

5. Whereas in pursuance of the Drainage Maintenance Act, 1866, the Commissioners of Public Works in Ireland were called upon by certain proprietors in the Monivea drainage district, in the county of Galway, to put the works of that district, which had been neglected by the trustees, in repair, and executed the necessary works, but on the completion thereof it was found that a portion of the works so executed, namely, the underpinning of Chapel Field bridge and a certain work of excavation in connexion therewith, were not works of repair and maintenance, but were new works, and that therefore the sum of one hundred and fifty-five pounds expended on that portion of the works was not properly chargeable on the proprietors or owners of the land within the said drainage district:

And whereas it is expedient to authorise the remission of any claim by the Commissioners of Public Works for the repayment of the same sum, be it therefore enacted, that—

The Commissioners of Public Works in Ireland, with the approval of the Treasury, may remit the said sum of one hundred and fifty-five pounds, and the sum so remitted shall be deemed to be a free grant by Parliament.

6. Whereas the Public Works Loan Commissioners advanced to the Wicklow Harbour Commissioners, on the security of Wicklow harbour and the revenue thereof, a loan of six thousand pounds, by two instalments of three thousand pounds each, on the twenty-seventh day of January one thousand eight hundred and seventy and the eighteenth day of March one thousand eight hundred and seventy-one respectively, and such loan was made repayable by eighteen annual instalments, commencing at the end of the third year from the date of the security, with interest at the rate of five per centum per annum on the principal from time to time remaining unpaid:

And whereas, on the advance of the said loan, the Town Commissioners of Wicklow consented that the said loan and the security for the same should have priority over a mortgage of Wicklow harbour and the revenue thereof to the said Town Commissioners to secure twelve thousand pounds:

And whereas, in consequence of the revenue of Wicklow harbour having been sufficient only for the annual expenses, no part of the principal of the said loan has been repaid to the Public Works Loan Commissioners, and no interest has been paid thereon since the

month of March one thousand eight hundred and seventy-two an account of interest accrued due on the thirteenth day of February one thousand eight hundred and seventy-two, and the arrears of interest amount to upwards of two thousand eight hundred pounds:

And whereas an application has been made to the Commissioners of Public Works in Ireland to advance to the Wicklow Harbour Commissioners, for the purpose of improving and extending the harbour, under a baronial guarantee of certain baronies, a loan of forty thousand pounds, to be repayable in fifty annual instalments, with interest at the rate of four and a quarter per centum per annum, and to be a first charge on the revenue of Wicklow harbour:

And whereas, with a view to enable the Commissioners of Public Works to grant the said application, it is expedient to make such provision as herein-after appears with respect to the said loan, and arrears of interest thereon, due to the Public Works Loan Commissioners:

Be it therefore enacted as follows:—

The Commissioners of Public Works in Ireland, out of moneys in their hands for the purpose of loans, may pay to the Public Works Loan Commissioners the principal and interest due to those Commissioners in respect of the above-recited loan of six thousand pounds to the Wicklow Harbour Commissioners, and upon such payment the Public Works Loan Commissioners shall transfer the loan and arrears of interest thereon, and the securities for the same, to the Commissioners of Public Works in Ireland.

The Commissioners of Public Works in Ireland, in the event of their advancing, in accordance with the above-recited or any other application, any loan to the Wicklow Harbour Commissioners on a baronial guarantee, whether given before or after the passing of this Act, may, if the Town Commissioners of Wicklow consent to the postponement of their mortgage for twelve thousand pounds to such loan, make such loan a first charge on Wicklow harbour and the revenue thereof in priority to the principal and interest of the loan transferred in pursuance of this section. They may also convert the principal of the loan so transferred and the arrears of interest thereon due up to the date of the conversion into a consolidated debt to be repaid by a terminable annuity of such an amount as will repay the same within a period not exceeding twenty-eight years from the date of the conversion, if the rate of interest is taken at four per centum per annum; and so far as they have no further security for the consolidated debt and terminable annuity, the security given for the payment of the principal and interest of the loan shall be a security for the payment of such debt and annuity.

Amendment of Acts.

7. Where the Public Works Loan Commissioners have, either before or after the passing of this Act, in pursuance of the Public Works Loans Act, 1875, or of any enactment repealed by that Act, taken possession of any mortgaged property, and after the passing of this Act advance any sum for the completion, repair, improvement, or security of that property, the rate of interest on such sum shall, notwithstanding anything in section twenty-two of the Public Works Loans Act, 1875, or any like enactment repealed by that Act, be not less than five per cent. per annum.

8. The Local Government Board may make orders as to the expenses incurred by them or by any officer appointed by them in making or conducting any examination in pursuance of section thirty-six of the Public Works Loans Act, 1875, for the purpose of ascertaining that any loan or part of a loan advanced by the Public Works Loan Commissioners either before or after the passing of this Act, on the security of a rate, has been applied to the purpose for which the same was advanced.

Any such order may contain directions as to the parties by whom, and the rates out of which such expenses shall be borne, and on the application of the Local Government Board may be made a rule of the High Court of Justice in England, or of the High Court of Session in either division of the Inner House thereof in Scotland.

9. The unapplied balance of any loan advanced by the Public Works Loan Commissioners, either before or after the passing of this Act, on the security of a rate, may, with the consent of the said Commissioners, and of the central authority or department, if any, with whose sanction or consent such loan was authorised to be raised, be applied to any purpose to which moneys borrowed on the security of such rate are properly applicable; and in construing section thirty-six of the Public Works Loans Act, 1875, and section four of the Public Works Loans Act, 1878, the purpose to which any such unapplied balance as aforesaid is so applied, shall be deemed to be the purpose for which that portion of the loan was advanced.

10. Whereas by the Merchant Shipping Amendment Act, 1855, provision is made for the levying and recovery of dues to be paid by any ship which passes or derives benefit from a lighthouse erected on or near the coast of any British possession, and the Public Works Loan Commissioners are authorised to advance loans

for the purpose of constructing such lighthouse:

And whereas by the Besses Lights Act, 1869, and the Besses Lights Act, 1872, the Public Works Loan Commissioners were directed to advance sums not exceeding in the whole one hundred and forty-five thousand pounds, repayable in fifty years as therein mentioned, for the purpose of constructing the Great Besses Lighthouse and the Little Besses Lighthouse, and the dues levied in respect of that lighthouse are declared to form one fund (in this section referred to as the Besses Lights fund), to be applied for the purpose of paying the expenses incurred in erecting and maintaining such lighthouses, and for no other purpose whatever, and the priority of the charges on such fund is declared by section six of the Besses Lights Act, 1872:

And whereas sums amounting in the whole to one hundred and twenty thousand pounds have been advanced in pursuance of the said Acts, of which thirteen thousand pounds have been repaid, and the annual receipts of the Besses Lights fund during the year ending on the thirty-first day of March one thousand eight hundred and eighty exceeded the annual charges thereon by upwards of three thousand two hundred pounds:

And whereas it is expedient to provide for the remainder of the loan authorised by the said Acts being applied towards the erection of a lighthouse on the Island of Minicoy between the Maldiva and Laccadive Islands: Be it therefore enacted as follows:

- (1.) The existing power of the Public Works Loan Commissioners to advance a further loan of twenty-five thousand pounds under the Besses Lights Act, 1872, shall cease:
- (2.) In the event of provision being made by Order in Council and otherwise for the levy of dues in respect of any lighthouse to be erected on the said Island of Minicoy, the Public Works Loan Commissioners may, in lieu of the loan before in this section declared to cease, and in pursuance of the Merchant Shipping Act, 1854, and the Merchant Shipping Amendment Act, 1855, advance for the purpose of constructing such Minicoy Lighthouse any sum or sums not exceeding in the whole twenty thousand pounds, which shall be repayable as to each portion thereof within a period not exceeding fifty years from the date of the advance of such portion, and shall bear interest at the rate of four and a quarter per centum per annum:
- (3.) The sums advanced in pursuance of this section shall be advanced in accordance with the Public Works Loans Act, 1875, and be secured on the Besses Lights fund:

(4.) So long as any money is due to the Public Works Loans Commissioners on account of any loan under this section the dues payable in respect of the Great Basses Lighthouse and the Little Basses Lighthouse or the Minicoy Lighthouse shall be altered only with the consent of the Commissioners of Her Majesty's Treasury:

(5.) The dues received in respect of the Minicoy Lighthouse shall be carried to and form part of the Basses Light funds, and section six of the Basses Lights Act, 1872, shall be construed as if the Minicoy Lighthouse were one of the lighthouses therein mentioned, and the expenses of maintaining the Minicoy Lighthouse shall be defrayed accordingly, and the principal and interest of any loan under this section shall be charged on the said fund next after the sums charged thereon by the said section six.

11. Whereas by the Labouring Classes Dwelling Houses Act, 1866, and the Labouring Classes Lodging Houses and Dwellings (Ireland) Act, 1866, the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland respectively, are authorised to lend to the public bodies, companies, societies, associations, and persons therein mentioned loans for the purchase of lands or buildings, and the erection, alteration, and adaptation of buildings to be used as dwellings for the labouring classes:

And whereas it is expedient to remove certain doubts which have arisen with respect to such loans: Be it therefore enacted as follows:

Any company, society, or association established for the purpose of constructing or improving dwellings for the labouring classes shall be deemed to be and always to have been a company, society, or association to which a loan may be made in pursuance of the Labouring Classes Dwelling Houses Act, 1866, and the Labouring Classes Lodging Houses and Dwellings (Ireland) Act, 1866, and any loan heretofore made to any such company, society, or association shall be deemed to have been validly made, and the security given for the same shall be valid and effectual to all intents.

The period and rate of interest of any loan made in pursuance of either of the above-mentioned Acts may be such as is mentioned either in the Act or in section six of the Public Works Loans Act, 1879, with respect to the like loans by the Public Works Loans Commissioners, and the said section six shall be deemed to have been and this section shall be deemed to be in addition to and not in derogation of the powers under the above-mentioned Acts.

12. Whereas under the provisions of divers Acts of Parliament authorising the Commissioners of Public Works in Ireland to make loans for public and other purposes, it is provided that the repayment of the loans thereunder shall be completed, and the first instalment of such repayment made within the periods respectively therein mentioned from the date of the advance, or from the time when the first advance is made, and doubts have arisen with respect to the construction of such provisions in the case where a loan is advanced by instalments, and it is expedient to remove such doubts: Be it therefore enacted as follows:

The period of years mentioned in any of the recited Acts as the period within which advances made thereunder by the Commissioners of Public Works are to be repaid shall, as regards each instalment of any loan advanced by the said Commissioners, either before or after the passing of this Act, be reckoned from the date of the advance of the instalment by the Commissioners.

13. Whereas by the Mulkear Drainage District Act, 1880, the Commissioners of Public Works in Ireland were authorised to advance to the Mulkear drainage district board such sums as they might think proper, not exceeding the sum of one thousand pounds, to be applied for the purpose of discharging and paying a certain judgment debt recovered in an action therein mentioned, and the costs; and whereas doubts have arisen as to whether the costs include costs incurred by the board as well as the costs due to the judgment creditor; and it is expedient to remove such doubts, be it therefore enacted that—

The costs referred to in the said Act shall be deemed to include all costs properly incurred by the said drainage board in or incidental to the said action, as well as the costs due to the judgment creditor.

14. Whereas by the ninth section of the Relief of Distress (Ireland) Act, 1880, certain loans made to owners of land by the Commissioners of Public Works in Ireland in accordance with the public notices specified in that section were ratified and confirmed; but such ratification and confirmation does not apply to any loan of which a second instalment was not paid by the Commissioners of Public Works before the thirty-first day of July one thousand eight hundred and eighty; and it is expedient now to confirm such last-mentioned loans in cases in which the non-payment of the second instalment before the said date was caused by unavoidable oversight on the part of the said Commissioners at a time of unusual pressure on their offices;

Therefore, where a loan has been made by the Commissioners of Public Works to an owner of land under the public notices mentioned in section nine of the Relief of Distress (Ireland) Act, 1880, and a second instalment of such loan though not paid by the Commissioners of Public Works before the thirty-first day of July one thousand eight hundred and eighty, was paid by them, with the sanction of the Treasury, before the thirtieth day of April one thousand eight hundred and eighty-one, and the Commissioners of Public Works certify to the Treasury that the above-mentioned non-payment of the second instalment before the thirty-first day of July was caused without any delay or default on the part of the borrower, that loan is hereby ratified and confirmed; and all the provisions of the said Relief of Distress (Ireland) Act, 1880, and of any Act amending the same, relative to loans made to owners of land under the said public notices, shall apply to such loan as if the second instalment thereof had been paid before the said thirty-first day of July one thousand eight hundred and eighty.

PART IV.

Grant of Money for Irish Land Commission.

15. For the purpose of advances or of purchasers of estates by the Land Commission in Ireland under any Act passed during the present session amending the law relating to the occupation and ownership of land in Ireland, any sum or sums not exceeding in the whole the sum of one million four hundred thousand pounds may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the said Act, and such sums may be issued during the period ending on the thirtieth day of June one thousand eight hundred and eighty-two, or on any earlier day on which a further Act providing money for the purpose of such advances or purchases comes into operation.

The Treasury may, in the manner and subject to the limitations provided by the said Act, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

CHAP. 39.

Removal Terms (Burghs) (Scotland) Act, 1881.

1. *Short title and extent of Act.*
2. *Definition of terms.*
3. *Terms of entry to and removal from houses fixed.*
4. *Period of notice of removal.*
5. *How notice of removal may be given.*

An Act to provide for uniform Terms of entry to and removal from Houses within Burghs in Scotland.

(22d August 1881.)

WHEREAS in many burghs in Scotland a custom exists whereby for the purpose of tenants entry to or removal from houses, a period beyond the date as fixed by law of the term of entry or removal is allowed, within which such entry or removal may take place:

And whereas the period so allowed is not uniform, but varies according to the usage of the particular burgh:

And whereas such want of uniformity is productive of great inconvenience, and it is expedient that uniform terms for such entry and removal should be provided:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent

of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Removal Terms (Burghs) (Scotland) Act, 1881, and shall extend to Scotland only.

2. In this Act the expression "houses" shall mean and include dwelling-houses, shops, and other buildings and their appurtenances, excepting such dwelling-houses or buildings as shall be let along with land for agricultural purposes; the expression "burgh" shall mean and include royal burghs, parliamentary burghs, or any populous place, the boundaries whereof have been fixed and ascertained under the provisions of the General Police and Improvement (Scotland) Act, 1862, or of the Act first therein recited; the expression "lease" shall include "tack" and "set," and shall

apply to any lease, tack, or set whether constituted by writing or verbally, or by tacit relocation and of whatever duration; and the expression "tenant" shall mean a tenant under any lease as defined by this Act.

3. Where under any lease entered into after the passing of this Act the term for the tenant's entry to or removal from houses within the limits of any burgh shall be one or other of the terms of Whitsunday and Martinmas (whether old or new style), the term for such entry or removal shall, in the absence of express stipulation to the contrary, be held to be at noon of one or other of the following days to wit, the twenty-eighth day of May if the term be Whitsunday, and the twenty-eighth day of November if the term be Martinmas: Provided always, that when any of these days shall fall upon a Sunday or legal holiday, the term of entry or removal shall be at noon of the first lawful day thereafter.

4. In cases where houses within any burgh are let for any period not exceeding four calendar months, notice of removal therefrom, shall, in the absence of express stipulation, be given as many days before the date of issue as shall be equivalent to at least one-third of the full period of endurance of the lease.

5. Notice of removal from any houses within a burgh may hereafter be sufficiently given by registered letter, signed by the party entitled to give such notice or by the law agent or factor of such party, handed into any Post Office within the United Kingdom in time to admit of its being delivered at the address thereon, on or prior to the last date upon which by law such notice of removal must be given, addressed to the party entitled to receive such notice, and bearing the particular address of such party at the time if the same be known, or if the same be not known, then the last known address of such party.

CHAP. 40.

Universities Elections Amendment (Scotland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Amendment of 31 & 32 Vict. c. 48. :—*
 1. *Duration of the poll.*
 2. *Electors to vote by voting papers only.*
 3. *Registrar of University to issue voting papers and letters of intimation.*
 4. *Return of voting paper.*
 5. *Incapacitated voter.*
 6. *New voting paper.*
 7. *Application for voting paper.*
 8. *Registrar to transmit new voting paper.*
 9. *Polling of votes.*
 10. *Voting papers may be objected to by any candidate or agent in attendance.*
 11. *Transmission of certificate of votes and declaration of the poll.*
 12. *In an equality of votes returning officer may vote.*
 13. *Voting papers to be filed.*
 14. *Penalty for falsely signing voting papers.*
 15. *Voting papers not liable to stamp duty.*
 16. *Every graduate to become a member of general council, and certain ex-officio members of council to continue members.*
 17. *Corrupt payment of registration fee to be punishable as bribery.*
 18. *Polling expenses.*
 19. *Repeal of Acts inconsistent herewith.*

SCHEDULES.

An Act to make farther provision in regard to the Registration of Parliamentary Voters, and also in regard to the taking of the Poll by means of Voting Papers, in the Universities of Scotland. (22d August 1881.)

WHEREAS it is expedient to amend the law relating to the manner of voting at the election of members of Parliament for the Universities of Scotland :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act shall be cited for all purposes as the Universities Elections Amendment (Scotland) Act, 1881.

2. So many of the regulations with respect to the polling at the elections for the Universities directed to be observed by sections 38 and 39 of the Representation of the People (Scotland) Act, 1868, as are inconsistent with this Act, are hereby repealed, and in place thereof it is enacted that the following regulations shall be deemed and taken to be a part of the 38th and 39th sections of the said recited Act, and the recited Act shall, on and after the passing of this Act, be read and construed as if the 38th and 39th sections had included the following terms and provisions :—

1. If more than one candidate shall be proposed, and a poll shall be demanded, the proceedings shall be adjourned for the purpose of taking the poll for not less than twelve or more twenty clear days, exclusive of Saturdays and Sundays. On the day to which the proceedings have been adjourned as aforesaid for the purpose of taking the poll, the polling shall commence at each University by opening the voting papers, as herein-after provided, at eight o'clock in the morning, and shall continue for such period, not being less than four or more than six days (exclusive of Sundays), as the returning officer shall determine and announce in the public intimation of the adjournment for the purpose of taking the poll, but no poll shall be kept open later than four o'clock in the afternoon.

2. In case of a poll at an election, the votes shall be given by means of voting papers, and no voter shall be allowed to vote in person, or in any other way than is provided by this Act. Each voting

paper shall be in the form or to the effect set forth in the Schedule (A.) annexed to this Act. Each voting paper shall have a number printed or written on the back thereof, and shall have attached a counterfoil with the same number printed or written on the face. Before a voting paper is issued to a voter as herein-after provided, it shall be marked with an official mark, either stamped or perforated, and the number of such voter, as stated on the register of voters, shall be marked on the counterfoil, and a mark shall be placed in the register or any copy thereof used for the purposes of the election against the number of the voter to denote that a voting paper has been issued to him.

3. In case of a poll the registrar of the University, as soon as he conveniently can after the day of demand for a poll, and not later than six clear days thereafter (exclusive of Sundays), shall issue simultaneously through the post a voting paper, in the form or to the effect set forth in Schedule (A.) annexed to this Act, to each voter to his address as entered on the register of the general council of the University, who shall appear from said address to be resident within the United Kingdom or the Channel Islands; and such voting paper (the Christian name, surname, designation, and residence of the voter as appearing on the register having previously been filled in by the registrar, or some one having his authority) contained in an envelope marked on the outside as sent by the registrar of the University, shall be accompanied by a letter of intimation in the form or to the effect set forth in Schedule (B.) hereto annexed, and by a stamped envelope addressed to the registrar, for the return of the said voting paper; and each voter, upon receipt of his voting paper, if he desires to vote in the election, shall insert in the voting paper the name of the candidate for whom he votes, and the place and date of signature, and affix his subscription thereto, in the presence of one witness, who shall personally know the voter, and who shall attest the fact of such voting paper having been signed by the voter in his presence at the place therein mentioned, by signing his name at the foot thereof, and adding his designation and place of residence in the form or to the effect set forth in Schedule (A.) hereto annexed.

4. Thereafter the voting paper, so signed

and attested as aforesaid, shall, if the voter desires to vote in the election, be returned through the post to the registrar of the University by whom it was issued, so as to reach him not later than the time named for the return of the voting paper. Each voting paper, when received back by the registrar, shall be kept by him unopened in a fireproof safe, or other place of safety, until the poll begins.

5. If a voter, before or after he has received a voting paper, shall intimate or cause to be intimated in writing to the registrar that he is incapacitated from blindness or other physical cause to vote in the manner prescribed by this Act, it shall be lawful for the registrar, on getting back the voting paper from the voter, if such has been issued, to issue to the voter so incapacitated a voting paper in the form or to the effect set forth in Schedule (C.) hereunto annexed; and on said voting paper being received by the voter, it shall be competent for him to record his vote by the hand of a justice of the peace in the manner therein directed; and the said justice of the peace shall certify and attest the fact of his having been requested and authorised by the voter to sign said voting paper for him, and of its having been so signed by him in presence of the voter by signing an attestation in the form or to the effect of Schedule (C.) hereunto annexed; and such voting paper, when received by the registrar, shall have the same effect and be similarly dealt with as a voting paper signed by a voter in the form or to the effect set forth in Schedule (A.) hereunto annexed.
6. A voter who has not received a voting paper sent by post as aforesaid to his address as appearing on the register, or who has before re-delivery thereof to the registrar, inadvertently spoilt his voting paper in such manner that it cannot be conveniently used as a voting paper, or who has lost his voting paper, may, on his transmitting to the registrar a declaration signed by himself before a justice of the peace setting forth the fact of the non-receipt, the inadvertent spoiling, or the loss of the voting paper, require the registrar to send him a new voting paper in place of the one not received, or spoilt, or lost; and in case the voting paper has been spoilt, the spoilt voting paper shall be returned to the registrar, and when received by him shall be immediately cancelled, and in every case where a new voting paper is issued a mark shall be placed opposite the number of the voter's name on the register, to denote that a new voting paper has been issued in place of the one not received, or spoilt, or lost.
7. A voter who does not appear from his address as entered on the register to be resident within the United Kingdom or the Channel Islands, may apply in writing to the registrar to send a voting paper to him to an address within the United Kingdom or the Channel Islands.
8. The registrar, upon receiving an application in terms of either of the two preceding sub-sections at any time before the day on which the poll begins, shall forthwith transmit a new voting paper, or a voting paper, as the case may be, to the address as appearing on the register, or to the address within the United Kingdom or Channel Islands, as the case may be: Provided always, that no person shall be entitled to vote at any election by more than one voting paper, and that no voting paper containing the names of more candidates than the voter is entitled to vote for at such election shall be received or counted: Provided also, that the registrar shall open all letters coming addressed to him from the Dead Letter Office after the date of his issuing the voting papers, in order to ascertain and make public the names and addresses of the voters whose voting papers have not reached them, which he shall do by exhibiting publicly at his office in the University as they reach him a list of the names and addresses of the voters whose letters have been returned to him from the Dead Letter Office, for the information of all concerned. No voting paper shall be counted which does not reach the registrar before ten o'clock on the morning of the day on which the poll closes.
9. When the poll begins, the voting papers shall be opened and examined by the registrar in the presence of the vice-chancellor or his pro-vice-chancellors and the candidates, or the agents, if any, of the candidates, and the voting papers found to be marked with the official mark and the number on the back as appearing on the counterfoil, and otherwise regular, shall be counted and put apart until the end of the poll. Any voting paper which has not the official

mark and the number on the back as appearing on the counterfoil, or which is in the opinion of the vice-chancellor or his pro-vice-chancellor otherwise wanting in any of the essential conditions required by this Act, shall not be counted as a vote in the election, but shall be sealed up in a paper apart, marked on the back thereof with the words "voting papers received but rejected," and initialed by the vice-chancellor or a pro-vice-chancellor.

10. It shall be lawful for any candidate, or the agents of the candidates who may be in attendance, to inspect any voting paper before the same shall be counted, and to object to it on one or more of the following grounds:

1. That the voter named in the voting paper has already voted at that election:
2. That the person giving a vote by the voting paper is not qualified to vote:
3. That the voting paper is forged or falsified:
4. That the voting paper is wanting in any of the essential conditions required by this Act:

and the vice-chancellor, or one of his pro-vice-chancellors, shall have power to reject or receive, or receive and record as objected to, any voting papers: Provided, that in case the objection offered to any voting paper shall be that it is forged or falsified, such vice-chancellor or pro-vice-chancellor shall receive and count such voting paper, having previously written upon it, "objected to as forged," or, "objected to as falsified," together with the name of the person making such objection.

11. After the close of the poll the papers which shall have been counted shall be sealed up in a paper marked on the back thereof with the words "papers received and counted," and initialed by the vice-chancellors or pro-vice-chancellors of the respective Universities, and the vice-chancellors of the Universities of St. Andrews and Aberdeen shall immediately transmit to the respective returning officers a certificate in the form or to the effect set forth in Schedule (D.) hereunto annexed, subscribed by them respectively in presence of the candidates or their agents or of any three members of the general council of the respective Universities, and each of these returning officers shall, as soon as he conveniently can, in presence of the

candidates, or of the agents, if any, of the candidates who may be in attendance, cast up the votes for the two Universities for which he is returning officer, and declare to be elected the candidate for whom the majority of votes has been given.

12. Where an equality of votes is found to exist between any candidates at an election for the Universities, and where the addition of a vote would entitle any one of such candidates to be declared elected, the returning officer, if a member of the general council of either of the Universities for which the election is being held, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer.
13. All voting papers received and counted at such election, and the counterfoils thereof, as well as any voting papers rejected for informality, or on any other ground, and the counterfoils thereof shall be filed, and, along with any copy of the register used for the purposes of said election, shall be kept by the registrar or other officer entrusted with the care of the documents relating to the election; and any person shall be allowed to examine such voting papers, register, and other documents, at all reasonable times, on payment of a fee of one shilling, and to take copies thereof on payment of one shilling for each hundred voting papers or names in the register so copied.
14. Any person falsely or fraudulently signing any voting paper in the name of any other person, either as a voter or as a witness, and every person signing, certifying, attesting, or transmitting as genuine any false or falsified voting paper, knowing the same to be false or falsified, or with fraudulent intent altering, defacing, destroying, withholding, or abstracting any voting paper, shall be guilty of a crime and offence, and shall be punishable by fine or imprisonment for a term not exceeding one year.
15. No such voting paper as herein-before mentioned shall be liable to any stamp duty.
16. On and after the passing of this Act, no person shall be allowed after examination to graduate at any of the Universities of Scotland until he shall have paid, as a registration fee, a sum not exceeding twenty shillings to the general University fund of the University at which he wishes to graduate, the amount and

period of payment of such fee to be fixed from time to time by the University court of the said University, and thereafter the name, designation, qualification, and ordinary place of residence of each person qualified as at present to become a member of the general council of his University shall, on his graduation, be entered by the registrar in the registration book, made up in terms of the twenty-ninth section of the Representation of the People (Scotland) Act, 1868, in order to their being transferred to the register of members of the general council at the next revisal of the same, in terms of the thirty-fifth section of the last-mentioned Act; and every person who has hitherto been or who shall in the future become ex-officio a member of the general council of any of the Universities, owing either to his having been a professor in or having held office as member of a University court in any University, shall, on payment of a registration fee as aforesaid, be put and continued on the register of members of general council of said University during his life, and shall be entitled to all the privileges of a member of council: Provided always, that no person subject to any legal incapacity shall be entitled

to vote at any parliamentary election or exercise any other privilege as a member of the general council of any University.

17. Any person either directly or indirectly corruptly paying any fee for the purpose of enabling any person to be registered as a member of the general council, and thereby to influence his vote at any future election, and any candidate or other person either directly or indirectly paying such fee on behalf of any person for the purpose of inducing him to vote or to refrain from voting, shall be guilty of bribery, and shall be punishable accordingly; and any person on whose behalf and with whose privy any such payment as in this section mentioned is made shall also be guilty of bribery, and punishable accordingly.
18. The candidates shall be bound to pay and contribute among them the expenses necessarily incurred by the registrars in preparing and issuing the voting papers and in taking the poll, together with a reasonable remuneration for their trouble in reference thereto, as the same shall be determined by the returning officer.
19. All statutes, customs, ordinances, and enactments inconsistent with this Act are hereby repealed.

SCHEDULES.

SCHEDULE (A.)

PARLIAMENTARY ELECTION, 18 .

UNIVERSITY OF (name of University) VOTING PAPER.

No. (number of voter as on the register).

I, *A.B.* (the Christian name, surname, and designation of the voter), entered on the register as residing at (residence as appearing on the register), hereby declare that I have not before voted at this election, and hereby give my vote at this election for

Witness my hand this at ;
18 day of ;

(Signed) *A.B.*

Signed by *A.B.*, who is personally known to me, at the place and of the date above mentioned in my presence.

(Signed) *C.D.*

Add designation and place of residence.

SCHEDULE (B.)

PARLIAMENTARY ELECTION, 18 .

UNIVERSITY OF (name of University). REGISTRAR'S LETTER.

No. (number of voter as on the register).

Persons nominated.	Proposed by	Seconded by
<i>A.B.</i>	<i>Name of Pro-</i>	<i>Name of Se-</i>
<i>C.D.</i>	<i>poser.</i> <i>Do.</i>	<i>conder.</i> <i>Do.</i>

SIR,

I HAVE to intimate that the above-named persons have been nominated for the office of member of Parliament. Along with this letter you will receive a voting paper, and should you desire to vote at this election, I have to

request that you will insert in the blanks of the voting paper the name of the person for whom you vote and the place and date of your signing, and having signed your name thereto in presence of one witness, who will also sign his name as directed, you will return the voting paper by post to me at the University of _____, so as to reach me on or before 10 a.m. of (insert the day on which the poll finally closes).

I am, &c.
(Signed) G.H., Registrar.

(Date.)

SCHEDULE (C.)

PARLIAMENTARY ELECTION, 18 .

UNIVERSITY OF (name of University) VOTING
PAPER.

INCAPACITATED VOTER.

No. (number of voter as on the register).

I, A.B. (the Christian name and surname of the voter in full, and his designation and residence, to be filled in by the registrar or some one authorised by him), hereby declare that I have not before voted at this election, and hereby give my vote for _____, and have requested and authorised C.D., a justice of peace, to fill in the name of the candidate voted for, and subscribe this voting paper for me, as I am from (state the incapacity) unable to write.

I, C.D., a justice of the peace for _____, and residing at _____, hereby declare that A.B., before named, being personally known to me, did in my presence make the declaration before mentioned, and did duly request and authorise me to fill in the name of _____ as the candidate voted for at this

election, and to subscribe this voting paper for him, which I did on _____ day of _____, 18 .

(Signed) C.D., a justice of peace
for _____, and residing
at _____

SCHEDULE (D.)

PARLIAMENTARY ELECTION, 18 .

UNIVERSITY OF (name of University).

I, A.B., Vice-Chancellor of the said University, hereby declare that the voting papers in this election have been duly counted, and that the following is the result :

	Number.
Voting papers in favour of _____	-
Voting papers in favour of _____	-
(In accordance with the number of candidates voted for.)	

Certified by me and signed by me at _____, on _____ at _____ o'clock afternoon.

(Signed) A.B.,
Vice-Chancellor of _____ University.
(Addressed)

To the Returning Officer of
the Universities of _____
and _____

In the presence of _____

} This must be signed
in presence of the
candidates or their
agents, or three
members of the
general council of
the University, who
must also sub-
scribe.)

CHAP. 41.

Conveyancing and Law of Property Act, 1881.

ABSTRACT OF THE ENACTMENTS.

I.—PRELIMINARY.

1. Short title; commencement; extent.
2. Interpretation of property, land, &c.

II.—SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

3. Application of stated conditions of sale to all purchases.
4. Completion of contract after death.

Discharge of Incumbrances on Sale.

5. Provision by Court for incumbrances, and sale freed therefrom.

General Words.

6. *General words in conveyances of land, buildings, or manor.*

Covenants for Title.

7. *Covenants for title to be implied. On conveyance for value, by beneficial owner. Right to convey. Quiet enjoyment. Freedom from incumbrance. Further assurance. On conveyance of leaseholds for value, by beneficial owner. Validity of lease. On mortgage, by beneficial owner. Right to convey. Quiet enjoyment. Freedom from incumbrance. Further assurance. On mortgage of leaseholds, by beneficial owner. Validity of lease. Payment of rent and performance of covenants. On settlement. For further assurance, limited. On conveyance by trustees or mortgagees. Against incumbrances.*

Execution of Purchase Deed.

8. *Rights of purchaser as to execution.*

Production and Safe Custody of Title Deeds.

9. *Acknowledgment of right to production, and undertaking for safe custody of documents.*

III.—LEASES.

10. *Rent and benefit of lessees covenants to run with reversion.*
 11. *Obligation of lessors covenants to run with reversion.*
 12. *Apportionment of conditions on severance, &c.*
 13. *On sub-demise, title to leasehold reversion not to be required.*

Forfeiture.

14. *Restrictions on and relief against forfeiture of leases.*

IV.—MORTGAGES.

15. *Obligation on mortgagee to transfer instead of re-conveying.*
 16. *Power for mortgagor to inspect title deeds.*
 17. *Restriction on consolidation of mortgages.*

Leases.

18. *Leasing powers of mortgagor and of mortgagee in possession.*

Sale; Insurance; Receiver; Timber.

19. *Powers incident to estate or interest of mortgages.*
 20. *Regulation of exercise of power of sale.*
 21. *Conveyance, receipt, &c. on sale.*
 22. *Mortgagee's receipts, discharges, &c.*
 23. *Amount and application of insurance money.*
 24. *Appointment, powers, remuneration, and duties of receiver.*

Action respecting Mortgage.

25. *Sale of mortgaged property in action for foreclosure, &c.*

V.—STATUTORY MORTGAGE.

26. *Form of statutory mortgage in schedule.*
 27. *Forms of statutory transfer of mortgage in schedule.*
 28. *Implied covenants, joint and several.*
 29. *Form of re-conveyance of statutory mortgage in schedule.*

VI.—TRUST ON MORTGAGE ESTATES ON DEATH.

30. *Devolution of trust and mortgage estates on death.*

VII.—TRUSTEES AND EXECUTORS.

31. *Appointment of new trustees, vesting of trust property, &c.*
32. *Retirement of trustee.*
33. *Powers of new trustees appointed by court.*
34. *Vesting of trust property in new or continuing trustees.*
35. *Power for trustees for sale to sell by auction, &c.*
36. *Trustees receipts.*
37. *Power for executors and trustees to compound, &c.*
38. *Powers to two or more executors or trustees.*

VIII.—MARRIED WOMEN.

39. *Power for court to bind interest of married woman.*
40. *Power of attorney of married woman.*

IX.—INFANTS.

41. *Sales and leases on behalf of infant owner.*
42. *Management of land and receipt and application of income during minority.*
43. *Application by trustees of income of property of infant for maintenance, &c.*

X.—RENTCHARGES AND OTHER ANNUAL SUMS.

44. *Remedies for recovery of annual sums charged on land.*
45. *Redemption of quitrents and other perpetual charges.*

XI.—POWERS OF ATTORNEY.

46. *Execution under power of attorney.*
47. *Payment by attorney under power without notice of death, &c. good.*
48. *Deposit of original instruments creating powers of attorney.*

XII.—CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

49. *Use of word grant unnecessary.*
50. *Conveyance by a person to himself, &c.*
51. *Words of limitation in fee or in tail.*
52. *Powers simply collateral.*
53. *Construction of supplemental or annexed deed.*
54. *Receipt in deed sufficient.*
55. *Receipt in deed or indorsed, evidence for subsequent purchaser.*
56. *Receipt in deed or indorsed, authority for payment to solicitor.*
57. *Sufficiency of forms in Fourth Schedule.*
58. *Covenants to bind heirs, &c.*
59. *Covenants to extend to heirs, &c.*
60. *Effect of covenant with two or more jointly.*
61. *Effect of advance on joint account, &c.*
62. *Grants of easements, &c. by way of use.*
63. *Provision for all the estate, &c.*
64. *Construction of implied covenants.*

XIII.—LONG TERMS.

65. *Enlargement of residus of long term into fee simple.*

XIV.—ADOPTION OF ACT.

66. *Protection of solicitor and trustees adopting Act.*

XV.—MISCELLANEOUS.

67. *Regulations respecting notice.*
68. *Short title of 5 & 6 Will. 4. c. 62.*

XVI.—COURT; PROCEDURE; ORDERS.

69. *Regulations respecting payments into court and applications.*70. *Orders of Court conclusive.*

XVII.—REPEALS.

71. *Repeal of enactments in Part III. of Second Schedule: restriction on all repeals.*

XVIII.—IRELAND.

72. *Modifications respecting Ireland.*73. *Death of bare trustee intestate, &c.*

SCHEDULE.

An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgagees, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes.

(22d August 1881.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—PRELIMINARY.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1881.

(2.) This Act shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-one.

(3.) This Act does not extend to Scotland.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest:

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land:

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income.

(iv.) Manor includes lordship, and reputed manor or lordship:

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment,

lease, settlement, and other assurance and covenant to surrender, made by a deed on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance:

(vi.) Mortgage includes any charge on any property for securing money or money's worth; and mortgage money means money, or money's worth, secured by a mortgage; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right in the mortgaged property; and mortgagee includes any person from time to time deriving title under the original mortgagee; and mortgagee in possession is for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property:

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof:

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser; but sale means only a sale properly so called:

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(x.) Building purposes include the erecting and the improving of, and the adding to, and

the repairing of buildings; and a building lease is a lease for building purposes or purposes connected therewith:

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes:

(xii.) Will includes codicils:

(xiii.) Instrument includes deed, will, inclosure, award, and Act of Parliament:

(xiv.) Securities include stocks, funds, and shares:

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy:

(xvi.) Writing includes print; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document, being in writing or in print, or partly in writing and partly in print:

(xvii.) Person includes a corporation:

(xviii.) Her Majesty's High Court of Justice is referred to as the Court.

II.—SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(3.) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted

instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise.

(4.) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(7.) On a sale of any property in lots, a

purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this Act.

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

4.—(1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land his personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate.

(3.) This section applies only in cases of death after the commencement of this Act.

Discharge of Incumbrances on Sale.

5.—(1.) Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amounts as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other

contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

(2.) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare, the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(3.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

General Words.

6.—(1.) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them or any part thereof.

(3.) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of

frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief rents, quit rents, rentscharge, rents seck, rents of assize, fee farm rents, services royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5.) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this Act.

Covenants for Title.

7.—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say :

(A.) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and

in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the con-

veyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required):

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsundered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance:

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part

thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or right-fully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsundered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will

at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them :

(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely) :

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required :

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only (namely) :

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

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(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject matter so conveyed by his direction ; and a covenant on his part shall be implied accordingly.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner ; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section implied in the conveyance.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person, in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(8.) This section applies only to conveyances made after the commencement of this Act.

Execution of Purchase Deed.

8.—(1.) On a sale, the purchaser shall not be entitled to require that the conveyance to

him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

(2.) This section applies only to sales made after the commencement of this Act.

Production and Safe Custody of Title Deeds.

9.—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

(i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorized in writing; and

(ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled, and undamaged, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section

shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

III.—LEASES.

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessees part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2.) This section applies only to leases made after the commencement of this Act.

11.—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2.) This section applies only to leases made after the commencement of this Act.

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted

by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2.) This section applies only to leases made after the commencement of this Act.

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

Forfeiture.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the

future, as the Court, in the circumstances of each case, thinks fit.

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(7.) The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

IV.—MORTGAGES.

15.—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee instead of reconveying, and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of

this Act, be bound to assign and convey accordingly.

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

16.—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or extracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

(2.) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

17.—(1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

Leases.

18.—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land or any part thereof, as is in this section described and authorized.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorizes are—

(i.) An Agricultural or occupation lease for any term not exceeding twenty-one years; and

(ii.) A building lease for any term not exceeding ninety-nine years.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed or agreeing to execute within that time on the land leased, an improvement for or in connexion with building purposes.

(10.) In any such building lease a pepper-corn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exerciseable, as far as may be, as if they were conferred by this Act, and with all the

like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Sale; Insurance; Receiver; Timber.

19.—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

(i.) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby; and

(ii.) A power, at any time after the date of mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest

at the same rate, as the mortgage money; and

- (iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and
- (iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

20. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

- (i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or
- (ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or
- (iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such

estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damaged by an unauthorized, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

- (i.) Where there is a declaration in the mortgage deed that no insurance is required;
- (ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
- (iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorised to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

24.—(1.) A mortgagee entitled to appoint a

receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fits to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which is he appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely):

- (i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and
- (ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
- (iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing

necessary or proper repairs directed in writing by the mortgagee; and

- (iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Action respecting Mortgage.

25.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5.) This section applies to actions brought either before or after the commencement of this Act.

(6.) The enactment described in Part II. of the Second Schedule to this Act is hereby repealed.

(7.) This section does not extend to Ireland.

V.—STATUTORY MORTGAGE.

26.—(1.) A mortgage of freehold or lease-

hold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money:

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

27.—(1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A.) and (B.) and (C.) given in Part II. of the Third Schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee:

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there shall also be deemed to be included, and there shall by virtue of this Act be implied therein a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely):

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4.) If the deed of transfer is made in the form (C.), it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto, accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

28. In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

29. A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require.

VI.—TRUST AND MORTGAGE ESTATES ON DEATH.

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments,

corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

(2.) Section four of the Vendor and Purchaser Act, 1874, and section forty-eight of the Land Transfer Act, 1875, are hereby repealed.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act.

VII.—TRUSTEES AND EXECUTORS.

31.—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such persons or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable as aforesaid.

(2.) On an appointment of a new trustee, the number of trustees may be increased.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this

section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall by the deed, be discharged therefrom under this Act without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

33.—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the Court, or by any other court of competent jurisdiction, shall as well before as

after the trust property becomes by law or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this Act.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants and for the purposes of the trust, that estate, interest or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

35.—(1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy

in at any auction, or to rescind any contract for sale, and to resell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

36.—(1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2.) This section applies to trusts created either before or after the commencement of this Act.

37.—(1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this Act.

38.—(1.) Where a power or trust is given to

or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.

VIII.—MARRIED WOMEN.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

40.—(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

(2.) This section applies only to deeds executed after the commencement of this Act.

IX.—INFANTS.

41. Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the person, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

- (i.) If the infant attains the age of twenty-one years, then in trust for the infant;
- (ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but
- (iii.) If the infant dies while an infant, and

being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accu-

mulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

X.—RENTCHARGES AND OTHER ANNUAL SUMS.

44.—(1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by nonpayment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment

of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

45.—(1.) Where there is a quitrent, chief-rent, rentcharge, or other annual sum issuing out of land (in this section referred to as the rent), the Copyhold Commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Commissioners.

(3.) On proof to the Commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the Commissioners.

(5.) This section does not apply to tithe rentcharge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant

or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this Act.

(7.) This section does not extend to Ireland.

XI.—POWERS OF ATTORNEY.

46.—(1.) The donee of a power of attorney, may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

47.—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when

so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General Rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

XII.—CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

49.—(1.) It is hereby declared that the use of the word grant is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2.) This section applies to conveyances made before or after the commencement of this Act.

50.—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(2.) This section applies only to conveyances made after the commencement of this Act.

51.—(1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

(2.) This section applies only to deeds executed after the commencement of this Act.

52.—(1.) A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power.

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

53.—(1.) A deed expressed to be supplemental to a previous deed, or directed to be read as

an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

(2.) This section applies to deeds executed either before or after the commencement of this Act.

54.—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

(2.) This section applies only to deeds executed after the commencement of this Act.

55.—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2.) This section applies only to deeds executed after the commencement of this Act.

56.—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

57. Deeds in the form of and using the expressions in the Forms given in the Fourth Schedule to this Act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

58.—(1.) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

(2.) A covenant relating to land not of

inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators, and assigns were expressed.

(3.) This section applies only to covenants made after the commencement of this Act.

59.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

60.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond or obligation made or implied after the commencement of this Act.

61.—(1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage or such an obligation, or such a transfer is made to more persons than one,

jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

62.—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

(2.) This section applies only to conveyances made after the commencement of this Act.

63.—(1.) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3.) This section applies only to conveyances made after the commencement of this Act.

64. In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

XIII.—LONG TERMS.

65.—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

(2.) Each of the following persons (namely):

(i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;

(ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

(iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of

every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

XIV.—ADOPTION OF ACT.

66.—(1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction,

of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

XV.—MISCELLANEOUS.

67.—(1.) Any notice required or authorized by this Act to be served shall be in writing.

(2.) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or, left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorized by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the Court.

68. The Act described in Part II. of the First Schedule to this Act shall, by virtue of this Act, have the short title of the Statutory Declarations Act, 1835, and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

XVI.—COURT; PROCEDURE; ORDERS.

69.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to

the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall, except where it is otherwise expressed, be by summons at Chambers.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor,

(5.) On an application by a vendor notice shall be served in the first instance on the purchaser.

(6.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(7.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application.

(8.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, and may be made accordingly.

(9.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(10.) General Rules, and Rules of the Court of Chancery of the County Palatine, under this Act may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

70.—(1.) An order of the Court under any statutory or other jurisdiction shall not as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

(2.) This section shall have effect with respect to any lease, sale, or other act under the authority of the Court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section forty of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the com-

mencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

XVII.—REPEALS.

71.—(1.) The enactments described in Part III. of the Second Schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section forty of the Settled Estates Act, 1877, or any former Act repealed by that Act.

XVIII.—IRELAND.

72.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act may direct that any of those matters be assigned to the Land Judges of that Division.

(4.) The proper office of the Supreme Court of Judicature in Ireland shall be substituted for the central office of the Supreme Court of Judicature.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

73.—(1.) Section five of the Vendor and Purchaser Act, 1874, is hereby repealed from and after the commencement of this Act, as regards cases of death thereafter happening; and section seven of the Vendor and Purchaser Act, 1874, is hereby repealed as from the date at which it came into operation.

(2.) This section extends to Ireland only.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS AFFECTED.

PART I.

- 1 & 2 Vict. c. 110.—An Act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.
- 2 & 3 Vict. c. 11.—An Act for the better protection of purchasers against judgments, crown debts, lis pendens, and fiats in bankruptcy.
- 18 & 19 Vict. c. 15.—An Act for the better protection of purchasers against judgments, crown debts, cases of lis pendens, and life annuities or rentcharges.
- 22 & 23 Vict. c. 35.—An Act to further amend the law of property and to relieve trustees.
- 23 & 24 Vict. c. 38.—An Act to further amend the law of property.

23 & 24 Vict. c. 115.—An Act to simplify and amend the practice as to the entry of satisfaction on Crown debts and on judgments.

27 & 28 Vict. c. 112.—An Act to amend the law relating to future judgments, statutes, and recognizances.

28 & 29 Vict. c. 104.—The Crown Suits, &c. Act, 1865.

31 & 32 Vict. c. 54.—The Judgments Extension Act, 1868.

PART II.

5 & 6 Will. 4. c. 62.—An Act to repeal an Act of the present session of Parliament, intituled "An Act for the more effectual abolition of oaths and affirmations taken and made in various Departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;" and to make other provisions for the abolition of unnecessary oaths.

THE SECOND SCHEDULE.

REPEALS.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

PART I.

- | | | | | |
|-----------------------------------|---|---------------------------------------------------------------------|------------------------|-------------------|
| 22 & 23 Vict. c. 35.
in part. | - | An Act to further amend the law of property and to relieve trustees | Sections four to nine. | in part; namely,— |
| 23 & 24 Vict. c. 126.
in part. | - | The Common Law Procedure Act, 1860 | Section two. | in part; namely,— |

PART II.

- | | | | | |
|----------------------------------|---|--------------------------------------------------------------------------------------|----------------------|-------------------|
| 15 & 16 Vict. c. 86.
in part. | - | An Act to amend the practice and course of proceeding in the High Court of Chancery. | Section forty-eight. | in part; namely,— |
|----------------------------------|---|--------------------------------------------------------------------------------------|----------------------|-------------------|

PART III.

- | | | | |
|-----------------------------------|---|------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 8 & 9 Vict. c. 119. | - | An Act to facilitate the conveyance of real property. | |
| 23 & 24 Vict. c. 145.
in part. | - | An Act to give to trustees, mortgagees, and others certain powers now commonly inserted in settlements, mortgages, and wills | in part; namely,— |
| | | Parts II. and III. (sections eleven to thirty). | |

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I.

Deed of Statutory Mortgage.

THIS INDENTURE made by way of statutory mortgage the day of 1882 between A. of [§c.] of the one part and M. of [§c.] of the other part WITNESSETH that in consideration of the sum of £ now paid to A. by M. of which sum A. hereby acknowledges the receipt A. as mortgagor and as beneficial owner hereby conveys to M. All that [§c.] To hold to and to the use of M. in fee simple for securing payment on the day of 1883 of the principal sum of £ as the mortgage money with interest thereon at the rate of [four] per centum per annum.

In witness &c.

. Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between M. of [§c.] of the one part and T. of [§c.] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [§c.] WITNESSETH that in consideration of the sum of £ now paid to M. by T. being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage of which sum M. hereby acknowledges the receipt M. as mortgagee hereby conveys and transfers to T. the benefit of the said mortgage.

In witness &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between A. of [§c.] of the first part B. of [§c.] of the second part and C. of [§c.] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [§c.] WITNESSETH that in consideration of the sum of £ now paid to A. by C. being the mortgage money due in respect of the said

mortgage no interest being now due and payable thereon of which sum A. hereby acknowledges the receipt A. as mortgagee with the concurrence of B. who joins herein as covenantor hereby conveys and transfers to C. the benefit of the said mortgage.

In witness &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1883 between A. of [§c.] of the 1st part B. of [§c.] of the 2nd part and C. of [§c.] of the 3rd part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [§c.] WHEREAS the principal sum of £ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon AND WHEREAS B. is seised in fee simple of the land comprised in the said mortgage subject to that mortgage NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ now paid to A. by C. of which sum A. hereby acknowledges the receipt and B. hereby acknowledges the payment and receipt as aforesaid* A. as mortgagee hereby conveys and transfers to C. the benefit of the said mortgage AND THIS INDENTURE ALSO WITNESSETH that for the same consideration A. as mortgagee and according to his estate and by direction of B. hereby conveys and B. as beneficial owner hereby conveys and confirms to C. All that [§c.] To hold to and to the use of C. in fee simple for securing payment on the day of 1882 of the sum of £ as the mortgage money with interest thereon at the rate of [four] per centum per annum.

In witness &c.

[Or, in case of further advance, after aforesaid at * insert and also in consideration of the further sum of £ now paid by C. to B. of which sum B. hereby acknowledges the receipt, and after of at † insert the sums of £ and £ making together]

. Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

PART III.

Deed of Statutory Re-conveyance of Mortgage.

THIS INDENTURE made by way of statutory re-conveyance of mortgage the day of 1884 between C. of [§c.] of the one part and B. of [§c.] of the other part supplemental to an indenture made by way of

statutory transfer of mortgage dated the day of 1883 and made between [§c.] WITNESSETH that in consideration of all principal money and interest due under that indenture having paid been of which principal and interest C. hereby acknowledges the receipt C. as mortgagee hereby conveys to B. all the lands and hereditaments now vested in C. under the said indenture To hold to and to the use of B. in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness &c.

*. Variations as noted above.

THE FOURTH SCHEDULE.

SHORT FORMS OF DEEDS.

I.—Mortgage.

THIS INDENTURE OF MORTGAGE made the day of 1882 between A. of [§c.] of the one part B. of [§c.] and C. of [§c.] of the other part WITNESSETH that in consideration of the sum of £ paid to A. by B. and C. out of money belonging to them on a joint account of which sum A. hereby acknowledges the receipt A. hereby covenants with B. and C. to pay to them on the day of 1882 the sum of £ with interest thereon in the meantime at the rate of [four] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to B. and C. interest thereon at the same rate by equal half-yearly payments on the day of and the day of

AND THIS INDENTURE ALSO WITNESSETH that for the same consideration A. as beneficial owner hereby conveys to B. and C. All that [§c.] To hold to and to the use of B. and C. in fee simple subject to the proviso for redemption following (namely) that if A. or any person claiming under him shall on the day of 1882 pay to B. and C. the sum of £ and interest thereon at the rate aforesaid then B. and C. or the persons claiming under them will at the request and cost of A. or the persons claiming under him re-convey the premises to A. or the persons claiming under him And A. hereby covenants with B. as follows [here add covenant as to fire insurance or other special covenant required].

In witness, &c.

II.—Further Charge.

THIS INDENTURE made the day of 18 between [the same parties as the foregoing mortgage] and supplemental to an

indenture of mortgage dated the day of 18 and made between the same parties for securing the sum of £ and interest at [four] per centum per annum on property at [§c.] WITNESSETH that in consideration of the further sum of £ paid to A. by B. and C. out of money belonging to them on a joint account [add receipt and covenant as in the foregoing mortgage] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to B. and C. of the sum of £ and the interest thereon herein-before covenanted to be paid as well as the sum of £ and interest secured by the same indenture.

In witness, &c.

III.—Conveyance on Sale.

THIS INDENTURE made the day of 1883 between A. of [§c.] of the 1st part B. of [§c.] and C. of [§c.] of the 2nd part and M. of [§c.] of the 3rd part WHEREAS by an indenture dated [§c.] and made between [§c.] the lands herein-after mentioned were conveyed by A. to B. and C. in fee simple by way of mortgage for securing £ and interest and by a supplemental indenture dated [§c.] and made between the same parties those lands were charged by A. with the payment to B. and C. of the further sum of £ and interest thereon AND WHEREAS a principal sum of £ remains due under the two before-mentioned indentures but all interest thereon has been paid as B. and C. hereby acknowledge NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ paid by the direction of A. to B. and C. and of the sum of £ paid to A. those two sums making together the total sum of £ paid by M. for the purchase of the fee simple of the lands herein-after mentioned of which sum of £ B. and C. hereby acknowledge the receipt and of which total sum of £ A. hereby acknowledges the payment and receipt in manner before-mentioned B. and C. as mortgagees and by the direction of A. as beneficial owner hereby convey and A. as beneficial owner hereby conveys and confirms to M. All that [§c.] To hold to and to the use of M. in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures [Add, if required, And A. hereby acknowledges the right of M. to production of the documents of title mentioned in the Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof]

In witness, &c.

[The Schedule above referred to.

To contain list of documents retained by A.]

IV.—*Marriage Settlement.*

THIS INDENTURE made the _____ day of _____ 1882 between *John M.* of [§c.] of the 1st part *Jane S.* of [§c.] of the 2nd part and *X.* of [§c.] and *Y.* of [§c.] of the 3rd part WITNESSETH that in consideration of the intended marriage between *John M.* and *Jane S.* *John M.* as settlor hereby conveys to *X.* and *Y.* All that [§c.] To hold to *X.* and *Y.* in fee simple to the use of *John M.* in fee simple until the marriage and after the marriage to the use of *John M.* during his life without impeachment of waste with remainder after his death to the use that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rentcharge of £ _____ to commence from his death and to be paid by equal half-yearly payments the first thereof to be made at the end of six calendar months from his death if she is then living or if not a proportional part to be paid at her death and

subject to the before-mentioned rentcharge to the use of *X.* and *Y.* for a term of five hundred years without impeachment of waste on the trusts herein-after declared and subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively according to seniority in tail male with remainder [insert here, if thought desirable, to the use of the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M.* in fee simple [Insert trusts of term of 500 years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition, and other powers and provisions, if and as desired].
In witness, &c.

CHAP. 42.

Corrupt Practices (Suspension of Elections) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
 2. *Suspension of elections in certain cities and boroughs.*
- SCHEDULE.

An Act to suspend for a limited period, on account of Corrupt Practices, the holding of an Election of a Member or Members to serve in Parliament for certain cities and boroughs.

(22d August 1881.)

WHEREAS, in pursuance of addresses to Her Majesty from both Houses of Parliament in relation to elections of members to serve in Parliament for the cities and boroughs mentioned in the schedule to this Act, commissioners were appointed by commissions, dated the ninth day of September one thousand eight hundred and eighty, for the purpose of making inquiry into the existence of corrupt practices at the elections of members to serve in Parliament for the said cities and boroughs:

And whereas the said commissioners have respectively reported as regards the existence of corrupt practices to the effect in the second column of the said schedule mentioned:

And whereas it is expedient, with a view to the future consideration of the cases by Parliament, to provide temporarily for the suspension of elections in the said cities and boroughs:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the *Corrupt Practices (Suspension of Elections) Act, 1881.*

2. An election of a member or members to serve in Parliament for any of the cities or boroughs mentioned in the schedule to this Act shall not be held until the expiration of seven days after the meeting of Parliament in the year one thousand eight hundred and eighty-two.



SCHEDULE.

CITIES AND BOROUGHS REFERRED TO.

Name of City or Borough.	Report of Commissioners as to prevalence of corrupt practices.
Boston - - -	Corrupt practices prevailed very extensively at the election of 1880. . . . It was stated as an undoubted fact that all elections, both parliamentary and municipal, have for a long time past been corrupt.
Canterbury - -	Corrupt practices extensively prevailed at the elections of 1879 and 1880.
Chester - - -	Corrupt practices extensively prevailed at the general elections of February 1874 and of April 1880.
Gloucester - -	Corrupt practices extensively prevailed at the elections in February 1874 and March 1880.
Macclesfield - -	Corrupt practices extensively prevailed at the elections of 1865, 1868, 1874, and 1880.
Oxford - - -	Corrupt practices were committed at the election in February 1874, and corrupt practices extensively prevailed at the elections in March 1874, April 1880, and May 1880, by way of payment of money to voters as therein mentioned.
Sandwich - - -	In the election of May 1880, there was practised throughout the constituency, not only indirect bribery of various kinds, but direct bribery, the most extensive and systematic. . . . Electoral corruption has long extensively prevailed in the borough.

CHAP. 43.

Superannuation Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extension of 36 & 37 Vict. c. 23.*

An Act to extend the Superannuation Act Amendment Act, 1873, to certain persons admitted into subordinate situations in the departments of the Postmaster-General, and the Commissioners of Her Majesty's Works and Public Buildings.

(22d August 1881.)

WHEREAS by the Superannuation Act, 1859, it is enacted that for the purposes of that Act no person thereafter to be appointed shall be deemed to have served in the permanent Civil Service of the State unless such person holds his appointment directly from the Crown or

has been admitted into the Civil Service with a certificate from the Civil Service Commissioners, and that a person appointed before the passing of that Act to an office shall not be held to have served in the permanent Civil Service as aforesaid, unless such person belonged to a class which was at the passing of the Act entitled to superannuation allowance or to such other class as therein mentioned :

And whereas in several public departments of the State persons not belonging to the said classes were appointed after the passing of the said Act, and before the fourth day of June one thousand eight hundred and seventy, to established situations in the Civil Service, but through inadvertence on the part of the heads of such departments, and without any default

on the part of the persons so appointed, no steps were taken before their appointment to procure for them certificates from the Civil Service Commissioners, and the Superannuation Act Amendment Act, 1873, was passed to relieve such persons, and authorised the Commissioners of Her Majesty's Treasury at any time before the first day of January one thousand eight hundred and seventy-four, upon application being made by the head of a public department, to declare that any such person as above mentioned should be in the same position as if he had been admitted into the Civil Service with a certificate from the Civil Service Commissioners:

And whereas since the said first day of January one thousand eight hundred and seventy-four it has been discovered that certain persons appointed before the said fourth day of June one thousand eight hundred and seventy to subordinate situations in the departments of the Postmaster-General and of the Commissioners of Her Majesty's Works and Public Buildings were, without any default on the part of such persons, omitted from the

applications authorised to be made to the Treasury by the Superannuation Act Amendment Act, 1873, and it is unjust that such persons should be deprived of the benefits of that Act:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Superannuation Act, 1881.

2. The Superannuation Act Amendment Act, 1873, shall apply to the several persons appointed as aforesaid to subordinate situations in the departments of the Postmaster-General and of the Commissioners of Her Majesty's Works and Public Buildings, but not further or otherwise, in like manner as if it were herein re-enacted, with the substitution of one thousand eight hundred and eighty-two for one thousand eight hundred and seventy-four.

CHAP. 44.

Solicitors Remuneration Act, 1881.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short title; extent; interpretation.*

General Orders.

2. *Power to make General Orders for remuneration in conveyancing, &c.*
3. *Communication to Incorporated Law Society.*
4. *Principles of remuneration.*
5. *Security for costs, and interest on disbursements.*
6. *Order to be laid before Houses of Parliament; disallowance on address.*
7. *Effect of Order as to taxation.*

Agreements.

8. *Power for solicitor and client to agree on form and amount of remuneration.*
9. *Restriction on Solicitors Act, 1870.*

An Act for making better provision respecting the Remuneration of Solicitors in Conveyancing and other non-contentious Business.

(22d August 1881.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

- 1.—(1.) This Act may be cited as the Solicitors Remuneration Act, 1881.
- (2.) This Act does not extend to Scotland.
- (3.) In this Act—
 "Solicitor" means a solicitor or proctor qualified according to the statutes in that behalf;
 "Client" includes any person who, as a principal, or on behalf of another, or as trustee or executor, or in any other capa-

city, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ, a solicitor, and any person for the time being liable to pay to a solicitor, for his services, any costs, remuneration, charges, expenses, or disbursements:

"Person" includes a body of persons corporate or unincorporate: "Incorporated Law Society" means, in England, the society referred to under that title in the Act passed in the session of the twenty-third and twenty-fourth years of Her Majesty's reign, intituled "An Act to amend the Laws relating to Attorneys, Solicitors, Proctors, and Certificated Conveyancers"; and, in Ireland, the society referred to under that title in the Attorneys and Solicitors Act, Ireland, 1866: "Provincial law societies or associations" means all bodies of solicitors in England incorporated by Royal Charter, or under the Joint Stock Companies Act, other than the Incorporated Law Society above mentioned.

General Orders.

2. In England, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, and the president of one of the provincial law societies or associations, to be selected and nominated from time to time by the Lord Chancellor to serve during the tenure of office of such president, or any three of them, the Lord Chancellor being one, and, in Ireland, the Lord Chancellor, the Lord Chief Justice of Ireland, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, or any three of them, the Lord Chancellor being one, may from time to time make any such General Order as to them seems fit for prescribing and regulating the remuneration of solicitors in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business not being business in any action, or transacted in any Court, or in the Chambers of any Judge or Master, and not being otherwise contentious business, and may revoke or alter any such Order.

3. One month at least before any such General Order shall be made, the Lord Chancellor shall cause a copy of the regulations and provisions proposed to be embodied therein to be communicated in writing to the Council of the Incorporated Law Society, who shall be at liberty to submit such observations and suggestions in writing as they may think fit to offer thereon;

and the Lord Chancellor, and the other persons hereby authorised to make such Order, shall take into consideration any such observations or suggestions which may be submitted to them by the said Council within one month from the day on which such communication to the said Council shall have been made as aforesaid, and, after duly considering the same, may make such Order, either in the form or to the effect originally communicated to the said Council, or with such alterations, additions, or amendments, as to them may seem fit.

4. Any General Order under this Act may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or per-centage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, or others, and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following, among other, considerations; (namely.)

The position of the party for whom the solicitor is concerned in any business, that is, whether as vendor or as purchaser, lessor or lessee, mortgagor or mortgagee, and the like:

The place, district, and circumstances at or in which the business or part thereof is transacted:

The amount of the capital money or of the rent to which the business relates:

The skill, labour, and responsibility involved therein on the part of the solicitor:

The number and importance of the documents prepared or perused, without regard to length:

The average or ordinary remuneration obtained by solicitors in like business at the passing of this Act.

5. Any General Order under this Act may authorise and regulate the taking by a solicitor from his client of security for future remuneration in accordance with any such Order, to be ascertained by taxation or otherwise, and the allowance of interest.

6.—(1.) Any General Order under this Act shall not take effect unless and until it has been laid before each House of Parliament, and one month thereafter has elapsed.

(2.) If within that month an address is presented to the Queen by either House, seeking the disallowance of the Order, or part thereof, it shall be lawful for Her Majesty, by Order in Council, to disallow the Order, or that part,

and the Order or part disallowed shall not take effect.

7. As long as any General Order under this Act is in operation, the taxation of bills of costs of solicitors shall be regulated thereby.

Agreements.

8.—(1.) With respect to any business to which the foregoing provisions of this Act relate, whether any General Order under this Act is in operation or not, it shall be competent for a solicitor to make an agreement with his client, and for a client to make an agreement with his solicitor, before or after or in the course of the transaction of any such business, for the remuneration of the solicitor, to such amount and in such manner as the solicitor and the client think fit, either by a gross sum, or by commission or per-centage, or by salary, or otherwise; and it shall be competent for the solicitor to accept from the client, and for the client to give to the solicitor, remuneration accordingly.

(2.) The agreement shall be in writing, signed by the person to be bound thereby or by his agent in that behalf.

(3.) The agreement may, if the solicitor and the client think fit, be made on the terms that

the amount of the remuneration therein stipulated for either shall include or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees, or other matters.

(4.) The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if, under any order for taxation of costs, such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing master or officer of the Court may inquire into the facts, and certify the same to the Court; and if, upon such certificate, it shall appear to the Court or judge that just cause has been shown either for cancelling the agreement, or for reducing the amount payable under the same, the Court or judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or judge may seem fit.

9. The Attorneys and Solicitors' Act, 1870, shall not apply to any business to which this Act relates.

CHAP. 45.

Pedlars Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

2. *Alteration of 34 & 35 Vict. c. 96. so far as regards requiring indorsement of a pedlar's certificate.*
SCHEDULE.

An Act to amend the Pedlars Act, 1871, as regards the district within which a certificate authorises a person to act as Pedlar. (22d August 1881.)

WHEREAS by the Pedlars Act, 1871, it is provided that any pedlar who has obtained a pedlar's certificate desires to act as a pedlar in any other police district than that in which the certificate is taken out must obtain an indorsement of such certificate by the chief officer of police of such other district:

And whereas it is expedient to remove the necessity for such indorsement:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Pedlars Act, 1881.

This Act and the Pedlars Act, 1871, may be cited together as the Pedlars Acts, 1871 and 1881.

2. A pedlar's certificate granted under the Pedlars Act, 1871, shall during the time for which it continues in force authorise the person to whom it is granted to act as a pedlar within any part of the United Kingdom.

The Pedlars Certificate Act, 1871, is repealed to the extent in the third column of the schedule to this Act mentioned.



SCHEDULE.

ENACTMENTS REPEALED.

A description or citation of a portion of an Act in this schedule is inclusive of the word, section, or other part first and last mentioned or otherwise referred to as forming the beginning, or as forming the end, of the portion described in the description or citation.

Session and Chapter.	Title.	Extent of Repeal.
34 & 35 Vict. c. 96.	- The Pedlars Act, 1871 -	Section four, from "or acts as a pedlar in any district" down to "this Act"; section six, from "a pedlar's certificate" down to "taken out"; section seven; in section eight the words "and of the indorsement of certificates" and the words "and made"; section twelve so far as it relates to an indorsement, and section fifteen so far as it relates to an indorsement.

CHAP. 46.

Patriotic Fund Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Authority to sell boys school.*
3. *Filling up vacancies among Commissioners.*
4. *Provision as to application of funds administered by the Patriotic Fund Commissioners.*
5. *Approval of Treasury to pension under 30 & 31 Vict. c. 98. s. 19.*

SCHEDULE.

An Act to amend the Patriotic Fund Act, 1867, and make further provision respecting certain Funds administered by the same Commissioners as the Patriotic Fund. (22d August 1881.)

WHEREAS the fund called the Patriotic Fund has been administered in accordance with commissions from Her Majesty (the original commission having been dated the seventh day of October one thousand eight hundred and fifty-four, and the supplementary commission having been dated the twenty-sixth day of March one thousand eight hundred and sixty-eight), and in accordance with the Patriotic Fund Act, 1867, and has been so administered by the Commissioners and the executive committee appointed by them in pursuance of the said commissions:

And whereas the Commissioners appropriated the Patriotic Fund for divers purposes, and among others for the erection and endowment

of a girls school known as the Royal Victoria Patriotic Asylum for Girls, and for the partial endowment of a boys school known as the Royal Victoria Patriotic Asylum for Boys, and purchased land and erected thereon the said girls school and boys school, and such appropriations were confirmed by the Patriotic Fund Act, 1867:

And whereas, in pursuance of the said Act, Her Majesty by the said supplementary commission directed the Commissioners to apply the Patriotic Fund (subject to the appropriations above mentioned), in such manner as the Commissioners might think fit, for the purposes mentioned in section five of the said Act, and further directed that the fund known as the Rodriguez Fund should be applied for the like purposes as the Patriotic Fund:

And whereas the Commissioners have undertaken to apply to the Charity Commissioners for England and Wales for a scheme under the Endowed Schools Act, 1869, to deal with the government of the girls school known as the

Royal Victoria Patriotic Asylum for Girls, and with such portion of the Patriotic Fund as has been appropriated for the endowment thereof:

And whereas it is expedient to authorise the sale of the boys school known as the Royal Victoria Patriotic Asylum for Boys, and to make such other provision with respect to the said Commissioners and the Patriotic Fund and Rodriguez Fund as is herein-after contained:

And whereas the said Commissioners have accepted the administration of the funds mentioned in the schedule to this Act, and it is expedient to make further provision respecting those funds:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Patriotic Fund Act, 1861.

2. The Commissioners of the Patriotic Fund may agree to sell the boys school known as the Royal Victoria Patriotic Asylum for Boys, and the land appropriated thereto, in such manner as they think expedient, and the official trustees of the Patriotic Fund within the meaning of the Patriotic Fund Act, 1867, may convey the same to the purchaser, and the conveyance by the said official trustees and their receipt for the purchase money shall be conclusive evidence in favour of the purchaser and all persons claiming through him that the sale of the property comprised in the conveyance was authorised by and duly made in pursuance of this Act, and that the purchase money was duly paid; and the purchaser shall not inquire into the legality of the sale or into the application of the purchase money, or be responsible for the non-application or misapplication thereof.

The said purchase money and also the part of the endowment appropriated for the boys school shall be carried to and form part of the Patriotic Fund, and be applicable for the purposes to which the rest of that fund is for the time being applicable.

3. It shall be lawful for Her Majesty from time to time by warrant under Her Sign Manual to appoint any person to fill any vacancy among the Commissioners of the Patriotic Fund which has arisen either before or after the passing of this Act from death, resignation, or otherwise, and all persons so appointed shall be Commissioners of the Patriotic Fund, in like manner as if they were named in the above-recited commissions

or in any supplemental commission issued after the passing of this Act.

4. It shall be lawful for Her Majesty from time to time, by supplemental commission under Her Royal Sign Manual, to direct the Commissioners of the Patriotic Fund to apply the Patriotic Fund and the income and accumulations thereof or any parts thereof (so far as not appropriated for the Royal Victoria Patriotic Asylum for Girls and for the purposes mentioned in the schedule to the Patriotic Fund Act, 1867, and so far as not required to meet liabilities and claims existing prior to the date of such commission) for such purposes for the benefit of the widows and children of officers and men of Her Majesty's military and naval forces, and in such manner as may be directed by the said commission, and so far as any direction in the commission does not extend, as the Commissioners from time to time think expedient.

This section shall apply to the Rodriguez Fund and to any surplus of the funds mentioned in the schedule to this Act which remains after providing for the special trusts of those funds in like manner as if such Rodriguez Fund and surplus formed part of the Patriotic Fund.

Section six to twenty (both inclusive) of the Patriotic Fund Act, 1867, shall apply to all the funds mentioned in this section in like manner as if they were herein re-enacted, and as if the supplemental commission mentioned in these sections referred to any supplemental commission issued in pursuance of this Act, and as if the references in those sections to the said Act or to any section thereof referred to this section, and as if in the said sections as so re-enacted the Rodriguez Fund and the funds mentioned in the schedule to this Act, and any funds the administration of which may hereafter be accepted by the Commissioners of the Patriotic Fund, were specified as well as the Patriotic Fund: Provided that no transfer need be made under section eleven as so re-enacted of any funds already transferred to the official trustees of the Patriotic Fund, and that the account to be kept by the Paymaster-General under section fourteen shall be such as the Commissioners of Her Majesty's Treasury from time to time direct.

5. The Commissioners of the Patriotic Fund, before submitting to Her Majesty, under the Patriotic Fund Act, 1867, or this Act, any award of a pension or retiring allowance to any person employed by the Commissioners, shall obtain the approval of the Commissioners of Her Majesty's Treasury to such award.



SCHEDULE.

Fund.	Circumstances of Fund.
Captain Fund	This fund is administered under a trust deed of the 26th October 1871, which, after setting out the trusts of the fund, provides that any surplus shall be applied in relief of widows, children, or parents of officers, petty officers, non-commissioned officers, seamen, and marines of Her Majesty's Navy.
Royal Naval Relief Fund	This fund is administered under a commission from Her Majesty, dated the 7th June 1875, for the immediate relief of any special objects of destitution arising among the widows, orphans, and other relatives of deceased officers, sailors, and marines who have served in the Navy.
Eurydice Fund	This fund is administered under a trust deed dated the 19th November 1878, which, after setting out the trusts of the fund, provides that any surplus shall be transferred to the Royal Naval Relief Fund.
Zulu War Fund	This fund is administered under a Royal Warrant dated the 22nd August 1879, which provides that, subject to the special trusts therein mentioned, the fund shall be administered as Her Majesty may from time to time direct.
Atalanta Fund	This fund is administered under a trust deed dated the 11th day of July 1881, which sets forth the trust of the fund, and provides that any surplus shall be paid to the Royal Naval Relief Fund.

CHAP. 47.

Presumption of Life Limitation (Scotland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Presumption of life limited to seven years as regards income.*
2. *Provision for disposal of capital of movable estate seven years after date of deliverance.*
3. *Provision for disposal of heritable estate thirteen years after date of deliverance.*
4. *Provision for disposal of movable estate after fourteen years absence where no previous deliverance relative to income under sec. 1.*
5. *Provision for disposal of heritable estate after twenty years absence where no previous deliverance relative to income under sec. 1.*
6. *Power to dispense with consent of absent person to sale of property held pro indiviso.*
7. *Claim of absent person barred after thirteen years from date of deliverance.*
8. *Presumption of time of death.*
9. *Several persons may be conjoined in one petition.*
10. *Saving the rights of third parties.*
11. *Policies of assurance exempted.*
12. *Jurisdiction.*
13. *Short title.*

An Act to amend the Law as regards
the Presumption of Life in persons
long absent from Scotland.

(22d August 1881.)

WHEREAS great hardships have arisen from the want of any limitation to the presumption of life as regards persons who have been absent from Scotland or have disappeared for long periods of years, and it is desirable that a limitation should be provided :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In the case of any person who has been absent from Scotland, or who has disappeared, for a period of seven years or upwards, and who has not been heard of for seven years, and who at the time of his leaving or disappearance was possessed of or entitled to heritable or movable estate in Scotland, or who has become entitled to such estate in Scotland, it shall be competent to any person entitled to succeed to an absent person in such estate to present a petition to the Court setting forth the said facts, and after proof of the said facts, and of the petitioner's being entitled as aforesaid, and after such procedure and inquiry, by advertisement or otherwise, as the Court may direct, the Court may grant authority to the petitioner to uplift and enjoy the yearly income of the heritable or movable estate of such absent person, as the case may be, and to grant all requisite discharges for the same, as if the said absent person were dead ; or the Court may sequester the estate, and appoint a judicial factor thereon with the usual powers, and with authority to pay over the free yearly income of the estate to the petitioner, whose discharge shall be as valid and effectual as if granted by the absent person.

2. It shall be competent to the petitioner upon whose petition a deliverance has been granted in terms of the preceding section, authorising him to uplift and enjoy the yearly income of movable estate, or to the heir or representative of such petitioner, to present another petition to the Court after the lapse of seven years from the date of said deliverance, setting forth that during that further period the said absent person has not been heard of, and after proof of the facts stated in the petition, and such procedure and inquiry, by advertisement or otherwise, as the Court may direct, the Court may grant authority to the

petitioner to make up a title to, and thereupon to receive and discharge, possess and enjoy, the fee or capital of the said movable estate of the said absent person in the same manner as if the said absent person were dead.

3. It shall be competent to the petitioner or petitioners upon whose petition a deliverance has been granted in terms of section one, authorising him to uplift and enjoy the yearly income of heritable estate, or to the heir or representative of such petitioner, to present another petition to the Court after a lapse of thirteen years from the date of said deliverance, setting forth that during that further period the said absent person has not been heard of, and after proof of the facts stated in the petition, and such procedure and inquiry, by advertisement or otherwise, as the Court may direct, the Court may grant authority to the petitioner to make up a title to and enter into possession and enjoyment of the fee of the said heritable estate of the said absent person in the same manner as if the said absent person were dead.

4. In the case of any person who has been absent from Scotland, or who has disappeared for a period of fourteen years or upwards, and who has not been heard of for fourteen years, and who at the time of his leaving or disappearance was possessed of or entitled to movable estate in Scotland, or who has since become entitled to movable estate there, it shall be competent to any person entitled to succeed to the said absent person in such movable estate to present a petition to the Court setting forth the said facts ; and after proof of the said facts, and of the petitioner's being entitled as aforesaid, and after such procedure and inquiry, by advertisement or otherwise, as the Court may direct, the Court may grant authority to the petitioner to make up a title to, receive and discharge, possess and enjoy, sell or dispose of the said movable estate in the same manner as if the said absent person were dead.

5. In the case of any person who has been absent from Scotland, or who has disappeared for a period of twenty years or upwards, and who has not been heard of for twenty years, and who at the time of his leaving or disappearance was possessed of or entitled to heritable estate in Scotland, or who has since become entitled to heritable estate there, it shall be competent to any person entitled to succeed to said absent person in such heritable estate to present a petition to the Court setting forth the said facts ; and after proof of the said facts, and of the petitioner's being entitled as

aforesaid, and after such procedure and inquiry, by advertisement or otherwise, as the Court may direct, the Court may grant authority to the petitioner to make up a title to, enter into possession of and enjoy, and sell or dispose of the said heritable estate in the same manner as if the said absent person were dead.

6. Where the absent person shall have been one of two or more pro indiviso proprietors of heritable estate in Scotland, and he shall not have been heard of for seven years or upwards after his leaving Scotland or disappearance, and where the other pro indiviso proprietor or proprietors shall desire to sell the said estate, it shall be competent to such other pro indiviso proprietor or proprietors to present a petition to the Court setting forth the said facts, and after such procedure and inquiry, by advertisement or otherwise, as the Court may direct, the Court may grant authority to the petitioner or petitioners to sell the said estate by public roup or private bargain, as the Court may think fit, and the title granted by the said pro indiviso proprietor or proprietors under such authority shall be as good and valid to the purchaser as if the absent person had been a party to the sale and conveyance, and in the case of such a sale the share of the price belonging to the absent person shall be paid into bank for behoof of such absent person, and shall be deemed to be heritable estate of the said absent person, and, as such, shall be subject to the provisions of sections one, three, and five hereof.

7. In the event of the absent person having right to heritable or movable estate in Scotland as aforesaid, or of any person entitled to succeed to or take by title derived from him preferably to the person who has obtained possession of the heritable or movable estate under any of the preceding sections of this Act, appearing and establishing his right thereto, he shall be entitled to demand and receive the fee or capital of the said estate, heritable or movable, where extant in the hands of the person or persons who has or have obtained possession thereof as aforesaid, or of anyone taking from him by gratuitous title (subject to a claim for the value of any meliorations made thereupon by such person), or to demand and receive the price obtained for the said property, where the same has been sold, unless a period of thirteen years has elapsed since possession of the fee of such estate was obtained under the other provisions of this Act, and after the expiry of such period of thirteen years all claim by the absent person, or those entitled to succeed or deriving right from him

as aforesaid, shall be barred. In no case shall any person who has uplifted the income of property under any of the provisions of this Act, or the income of the price obtained therefor, prior to the absent person or those in his right as aforesaid appearing and intimating their claim, be liable to account for or pay to the absent person or those in his right the income received as aforesaid prior to the intimation of such claim.

8. For the purposes of this Act, in all cases where a person has left Scotland, or has disappeared, and where no presumption arises from the facts that he died at any definite date, he shall be presumed to have died on the day which will complete a period of seven years from the time of his last being heard of, at or after such leaving or disappearance.

9. Any number of persons entitled to succeed as aforesaid may be conjoined in one petition relating to the estate of the same absent person; and any person having a limited right of succession may appear as petitioner to the effect of having such right made effectual, subject to the provisions of this Act.

10. It is hereby expressly provided and declared that nothing in this Act contained shall be held to prejudice or affect the right of third parties, having right to the estate or any part of it, preferable to the right of the absent person, or to the right of his representatives derived from him.

11. This Act shall not apply to any claim under a policy of assurance upon the life of any person who has been absent from Scotland, or who has disappeared, but the person or persons claiming under such policy shall be required to prove the death of the person whose life is assured, in the same manner as if this Act had not been passed.

12. For the purposes of this Act "the Court" shall mean and include—

(1.) In all cases one of the Divisions of the Court of Session:

(2.) In all cases where the estate of the absent person in Scotland does not exceed in amount or value the sum of one hundred and fifty pounds sterling, the sheriff court of the county in which said estate or the greater part thereof is situate: Provided always, that the value of heritable estate shall be ascertained in terms of the provisions of the 40 & 41 Vict. c. 50.

13. This Act may be cited as the Presumption of Life Limitation (Scotland) Act, 1881.

CHAP. 48.

Metropolitan Board of Works (Money) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Construction of Act.*
3. *Interpretation.*
4. *Amendment of section 7 of 43 & 44 Vict. c. 25.*
5. *Amendment of section 6 of 43 & 44 Vict. c. 25. as to expenditure under Embankment Acts and in relation to Sun Street.*
6. *Amendment of section 10 of 43 & 44 Vict. c. 25. as to expenditure for purposes of main drainage and main sewers.*
7. *Power to Board to expend moneys for purposes of the Metropolitan Board of Works (Various Powers) Act, 1881, and 44 Vict. c. xviii.*
8. *Power to Board to expend money for purposes of 44 & 45 Vict. c. cxvii.*
9. *Power to Board to expend moneys during year ending 31st December 1882 for purposes of 18 & 19 Vict. c. 120. s. 144. and 25 & 26 Vict. c. 102. s. 72. of Street Improvements Act (35 & 36 Vict. c. clxiii.) of Parks and Open Spaces Acts, of Embankment Acts, improvement of Sun Street, of the obelisk on Victoria Embankment, and of the Toll Bridges Act, 40 & 41 Vict. c. xciz.*
10. *Power to Board to expend money for purposes of Fire Brigade.*
11. *Power to Board to expend money for purposes of street improvements under 40 & 41 Vict. c. ccxxv. and 42 & 43 Vict. c. cxviii.*
12. *Power to Board to expend money for purposes of schemes under 38 & 39 Vict. c. 36.*
13. *Special power to Board to expend money for purposes of main drainage and main sewers.*
14. *Expenses of inquiry as to markets.*
15. *Power to Board to lend to vestry or district board.*
16. *Power to Board to lend to board of guardians.*
17. *Extension of amount of loans by Board to managers of Metropolitan Asylum District.*
18. *Power to Board to lend to School Board for London.*
19. *Power to Board to lend to corporations, burial boards, &c.*
20. *Power to Board to apply consolidated loans fund to make loans to local authorities, &c. in metropolis.*
21. *Payment of expenses of Board in opposing 44 & 45 Vict. c. clx. in Parliament.*
22. *Board may raise money by bills.*
23. *Form and length of currency and interest on Metropolitan bills.*
24. *Payment and applications of proceeds of Metropolitan bills and charge of bills on consolidated rate.*
25. *Mode of issue of Metropolitan bills.*
26. *Regulations to be made by the Board as to issue, cancellation, &c. of Metropolitan bills.*
27. *Power to create consolidated stock partially suspended while Metropolitan bills authorised to be raised.*
28. *Application of certain provisions of 24 & 25 Vict. c. 98. to Metropolitan bills.*
29. *Arrangement with bank as to issue, &c. of Metropolitan bills.*
30. *32 & 33 Vict. c. 102. s. 38. not to extend to money raised under this Act.*
31. *Repayments to be carried to consolidated loans fund.*
32. *Limit to exercise by Board of borrowing powers.*
33. *Minutes of proceedings of Board to be printed.*
34. *38 & 39 Vict. c. 65. s. 15. amended as to salary of auditor.*

SCHEDULES.

An Act further to amend the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes relating thereto.
(22d August 1881.)

WHEREAS by the Metropolitan Board of Works (Loans) Act, 1875, (in this Act referred to as "the Act of 1875,") the raising of money

by the Metropolitan Board of Works (in this Act referred to as "the Board") for the purposes therein specified was regulated, and provision was made requiring that the borrowing powers granted to the Board by Parliament for the purposes therein named should for the future be limited both in time and amount:

And whereas by the Metropolitan Board of Works (Money) Act, 1880, (in this Act referred to as "the Act of 1880,") the Board were em-

powered to raise certain sums of money for the purposes in the said Act mentioned, and limits of time and amount within which the powers by the said Act granted might be exercised were fixed :

And whereas the powers for the raising of money by the Act of 1880 conferred upon the Board have been partially exercised, but it is expedient that the Board should have power to raise certain further sums of money, specified in the First Schedule to this Act annexed, for the purposes, upon the terms, and subject to the limitations herein-after mentioned, and that the Act of 1880 should be amended :

And whereas it is expedient that the Board should be empowered to raise any of the moneys which they are by this Act authorised to raise, and which it may be convenient to raise for a temporary period, by the issue of bills, with the consent of the Treasury, for not less than three and not more than twelve months, to be repaid out of moneys raised by the creation of consolidated stock under this Act :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Metropolitan Board of Works (Money) Act, 1881, and the Metropolitan Board of Works (Money) Acts, 1875 to 1880, and this Act may be cited together as the Metropolitan Board of Works (Money) Acts, 1875 to 1881.

2. This Act shall be read and have effect as one with the Metropolitan Board of Works (Loans) Acts, 1869 to 1871, and the Metropolitan Board of Works (Money) Acts, 1875 to 1880.

3. The expression " Parks and Open Spaces Acts " in this Act shall mean the enactments specified in Part I. of the Second Schedule to this Act annexed.

The expression " Embankment Acts " in the Metropolitan Board of Works (Loans) Act, 1869, and in this Act shall mean the series of Acts specified in Part II. of the Second Schedule to this Act annexed, and the Metropolitan Board of Works (Loans) Act, 1869, shall be construed accordingly.

The expression " Main Drainage Acts " in this Act shall have the same meaning as is assigned to the same term in the Metropolitan Board of Works (Loans) Act, 1869.

4. Section seven of the Act of 1880 shall be read and construed as if the aggregate amount

which the Board was thereby authorised to expend for the purposes of the Fire Brigade Act, 1865, had been limited to a sum not exceeding forty thousand pounds instead of thirty thousand pounds.

5. Section six of the Act of 1880 shall be read and construed as if the aggregate amount which the Board was, by sub-section (d) of the said section, authorised to expend for the purposes of completing the works authorised by the Embankment Acts, and for completing the Sun Street Improvement under the Metropolitan Board of Works Various Powers Act, 1876, had been limited to a sum of thirteen thousand pounds instead of ten thousand pounds, and as if the aggregate amount which the Board was, by sub-section (e) of the said section, authorised to expend for the purposes of defraying the costs of tablets of inscription on the four sides of the base of the obelisk on the Victoria Embankment, of the alteration of the adjoining granite pedestals and placing sphinxes thereon, and of other permanent work incurred and to be incurred in carrying out the general design, had been limited to nine thousand pounds instead of seven thousand pounds.

6. Section ten of the Act of 1880 shall be read and construed as if the aggregate amount which the Board was thereby authorised to expend for the purposes of main drainage and main sewers therein mentioned had been limited to a sum of four hundred thousand pounds instead of three hundred thousand pounds.

7. The Board may from time to time, up to the thirty-first day of December one thousand eight hundred and eighty-two, expend for the purposes of the Metropolitan Board of Works (Various Powers) Act, 1881, if it becomes law, such moneys as they may think fit, not exceeding thirty-four thousand two hundred pounds, and such further sum as the Treasury shall approve.

The Board may from time to time, up to the thirty-first day of December one thousand eight hundred and eighty-two, expend for the purpose of the Metropolitan Commons Supplemental Act, 1881, and in the purchase of a piece of land adjoining Brook Green, Hammersmith, a sum not exceeding twelve thousand pounds.

The Board, in order to raise money for purposes of this section, may from time to time create consolidated stock: Provided always, that the money to be raised and the consolidated stock to be created by the Board under this section shall be raised and created by them from time to time in such amounts

and at such times only as the Board shall actually require, and as the Treasury shall approve, for the purpose of carrying out the provisions of the said Act in a proper and efficient manner.

8. The Board may from time to time, up to the thirty-first day of December one thousand eight hundred and eighty-two, expend for the purposes of the Metropolitan Bridges Act, 1881, if it becomes law, such money as they think fit, not exceeding seven hundred and sixty thousand pounds.

The Board, in order to raise money for the purposes of this section, may from time to time create consolidated stock: Provided always, that the money to be raised and the consolidated stock to be created by the Board under this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require, and as the Treasury shall approve, for the purpose of carrying out the provisions of the said Act in a proper and efficient manner.

9. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-two, expend for the purposes herein-after mentioned such moneys as they may think fit, not exceeding the amounts limited in relation to such purposes respectively.

(a.) For the purposes mentioned in section one hundred and forty-four of the Metropolis Management Act, 1855, and section seventy-two of the Metropolis Management Amendment Act, 1862, one hundred thousand pounds:

(b.) For the purposes of the Metropolitan Street Improvements Act, 1872, thirty thousand and one hundred and thirty-four pounds eighteen shillings and ninepence, provided that the moneys hereby authorised to be expended for the said purposes, together with any moneys expended for the said purposes under the authority of the Metropolitan Board of Works (Money) Acts, 1877 to 1880, shall not exceed sixty thousand pounds:

(c.) For the purposes of the Parks and Open Spaces Acts fifteen thousand pounds:

(d.) For the purposes of completing the works authorised by the Embankment Acts, including the purchase and erection of lamp standards on such parts of such works as the Board may think fit, and for completing the Sun Street improvement under the Metropolitan Board of Works Various Powers Act, 1876, and for completing the tablets of inscription on the

four sides of the base of the obelisk on the Victoria Embankment, the adjoining granite pedestals and the sphinxes thereon, and other permanent work, in carrying out the general design in relation to the said obelisk, twelve thousand pounds; provided that the moneys hereby authorised to be expended for the said purposes, together with any moneys expended for the said purposes under the Act of 1880, shall not exceed thirty-four thousand pounds:

(e.) For the purposes of the Metropolis Toll Bridges Act, 1877, including the cost of certain special works for the maintenance and repair of certain of the bridges acquired by the Board under the said Act, and commutation of pensions, fifty thousand pounds; provided that the moneys hereby authorised to be expended for the said purposes, together with the moneys heretofore authorised to be expended by the Board for the purposes of the Metropolis Toll Bridges Act, 1877, shall not exceed the sum of one million six hundred thousand pounds.

The Board, in order to raise money for the several purposes mentioned in this section, may from time to time create consolidated stock.

10. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-two, expend for the purposes of providing station-houses, fire engines, fire escapes, and permanent plant for the purposes of the Fire Brigade Act, 1865, such money as they think fit, not exceeding thirty thousand pounds.

The Board, in order to raise money for the purposes of this section, may from time to time create consolidated stock.

The Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve as being in their opinion sufficient to redeem, within thirty years from the date of the creation of stock for purposes of this section, an amount of consolidated stock equal to that so created.

11. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-two, expend—

(a.) For the purposes of the Metropolitan Street Improvements Act, 1877, such money as they think fit, not exceeding one million five hundred thousand pounds, or such further sum as the Treasury may approve; provided that the moneys

hereby authorised to be expended for the said purposes, together with all moneys heretofore authorised to be expended by the Board for the said purposes, shall not exceed three million seven hundred and twelve thousand five hundred and seven pounds; and

- (b.) For the purposes of the Thames River (Prevention of Floods) Act, 1879, such money as they think fit, not exceeding ninety thousand pounds, or such further sum as the Treasury may approve.

The Board, in order to raise money for the several purposes mentioned in this section, may from time to time create consolidated stock: Provided always, that the money to be raised and the consolidated stock to be created by the Board under this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require, and as the Treasury shall approve, for the purpose of carrying into effect the provisions of the said Acts respectively in a proper and efficient manner.

12. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-two, expend for the purposes of schemes made by the Board under the authority of the Artizans and Labourers Dwellings Improvement Act, 1875, and confirmed by Provisional Order and Act of Parliament, such money as they think fit, not exceeding three hundred thousand pounds, or such further sum as the Treasury may approve.

The Board, in order to raise money for the purposes of this section, may from time to time create consolidated stock, but there shall be repaid (as provided by the Artizans and Labourers Dwellings Improvement Act, 1875) to the consolidated rate out of the local rate, as defined by the Artizans and Labourers Dwellings Improvement Act, 1875, all moneys required for payment of dividends on and the redemption of the consolidated stock created for the purposes of this section: Provided always, that the money to be raised and the consolidated stock to be created by the Board under this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require, and as the Treasury shall approve, for the purpose of carrying such schemes into effect in a proper and efficient manner.

13. The Board may, up to the thirty-first day of December one thousand eight hundred and eighty-two, expend for the purpose of adding to, extending, enlarging, improving,

and completing the works authorised by the Main Drainage Acts, and for rendering the same efficient in such manner as to them may seem proper, and for extending, enlarging, and improving the main sewers transferred to and vested in the Board under and by virtue of the Metropolis Management Act, 1855, and for making such other sewers and works, and such alterations and diversions of such existing main sewers, as may to them seem proper for the purpose of relieving, supplementing, and rendering such main sewers efficient, and for carrying into effect the several provisions in relation thereto mentioned in the said Acts, such moneys as they may think fit, not exceeding four hundred thousand pounds, in addition to any moneys which they are authorised to expend under any Acts passed previously to the passing of this Act, and for such purposes the Board may from time to time create consolidated stock, and all the provisions of the Main Drainage Acts and the Metropolis Management Act, 1855, and the Acts altering or amending the same for the time being in force relating to the execution of works authorised by the said Acts respectively shall continue in force, and shall extend and apply respectively to the works executed by means of money raised in pursuance of this section, and all stock created under the authority of this section shall be deemed to be created for the purposes of the above-mentioned Acts respectively.

14. The Board may, as part of their general expenses, pay all costs, charges, and expenses which may be incurred by them, up to the thirty-first day of December one thousand eight hundred and eighty-two, of and incidental to any inquiry to be instituted with respect to markets for the sale of food supplies within the metropolis, as defined by the Metropolis Management Act, 1855, and preliminary to, in, and incidental to the preparing, applying for, and obtaining an Act of Parliament with respect to such markets or any of such markets.

15. Where a vestry or district board constituted under the Metropolis Management Act, 1855, desire, in pursuance of authority vested in them by Act of Parliament, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-two the Board may lend to the

vestry or district board, and the vestry or district board may borrow from the Board, such money as the Board think fit, and as the vestry or district board are authorised and desire to borrow.

The aggregate amount lent by the Board under this section shall not exceed two hundred thousand pounds.

The Board, in order to raise money for purposes of this section, may from time to time create consolidated stock.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them with interest within such time after the borrowing as the Board and the borrowers with the approval of the Treasury agree, not exceeding in case of a loan for purposes of improvements effected by the widening of streets or bridges, or for the purpose of purchase of land in fee simple, sixty years, and for any other purpose thirty years.

In case of a loan required to be for not exceeding thirty years, the Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve, as being in their opinion sufficient to redeem within the period for which the loan is made, not exceeding thirty years from the date of the creation of stock for purposes of this section, an amount of consolidated stock equal to that so created.

16. Where a board of guardians of a union or parish wholly or for the greater part in the metropolis as defined in the Metropolitan Management Act, 1855, desire, in pursuance of authority vested in them, to borrow money for the purpose of any work or for the purpose of paying off any loan or debt or for any other purpose, and it appears to the Board and the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-two the Board may lend to the board of guardians, and the board of guardians may borrow from the Board, such money as the Board think fit and as the board of guardians are authorised and desire to borrow.

The aggregate amount lent by the Board under this section shall not exceed one hundred and fifty thousand pounds.

The Board, in order to raise money for purposes of this section, may from time to time create consolidated stock.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them with interest within such time after the borrowing as the Board

and the borrowers, with the approval of the Treasury, agree, not exceeding thirty years.

The Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve, as being in their opinion sufficient to redeem within the period for which the loan is made, not exceeding thirty years from the date of the creation of stock for purposes of this section, an amount of consolidated stock equal to that so created.

17. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-two, lend to the managers of the Metropolitan Asylum District, in addition to the sums heretofore authorised to be lent by the Board to the said managers, such sums as the said managers are from time to time authorised by the Local Government Board to borrow in pursuance of the Metropolitan Poor Act, 1867, and any Acts altering or amending the same for the time being in force, not exceeding in the whole fifty thousand pounds, as though the said sums were included in the amount authorised to be lent for such purposes by section thirty-seven of the Metropolitan Board of Works (Loans) Act, 1869, and the Acts amending the same.

The Board, in order to raise money for the purpose of this section, may from time to time create consolidated stock.

18. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-two, lend to the School Board for London, in accordance with the provisions of the Elementary Education Acts, 1870 and 1873, and any Act or Acts altering or amending the same for the time being in force, such sums as the said School Board are from time to time authorised to borrow by the Education Department in pursuance of the said Acts, not exceeding in the whole the sum of six hundred thousand pounds.

The Board, in order to raise money for the purpose of this section, may from time to time create consolidated stock.

The moneys so lent by the Board shall be repaid to them by the said School Board with interest within such period, not exceeding fifty years, as may be agreed upon between the Board and the said School Board, with the sanction of the Education Department, subject to the approval of the Treasury.

19. Where any corporation, body of commissioners, burial board, or other public body having power to levy directly or indirectly rates in respect of lands in the metropolis, as

defined in the Metropolis Management Act, 1855, or to make charges on rates leviable in the metropolis as so defined, or to take within the metropolis as so defined dues or impositions in the nature of rates, desire in pursuance of authority vested in them to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-two the Board may lend to the corporation, commissioners, burial board, or other public body, and they may borrow from the Board, such money as the Board think fit, and as the corporation, commissioners, burial board, or other public body are authorised and desire to borrow.

The aggregate amount lent by the Board under this section shall not exceed one hundred thousand pounds.

The Board, in order to raise money for purposes of this section, may from time to time create consolidated stock.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them with interest within such time after the borrowing as the Board and the borrowers with the approval of the Treasury agree, not exceeding in case of a loan for purposes of improvements effected by the widening of streets or bridges, or for the purpose of purchase of land in fee simple, sixty years, and for any other purpose thirty years.

In case of a loan required to be for not exceeding thirty years, the Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve, as being in their opinion sufficient to redeem within the period for which the loan is made, not exceeding thirty years from the date of the creation of the stock for purposes of this section, an amount of consolidated stock equal to that so created.

Nothing in this section shall apply to the case of a vestry or district board constituted under the Metropolis Management Act, 1855, a board of guardians, the managers of the Metropolitan Asylum District, or the School Board for London.

20. Where the Board are authorised by this Act, or the Metropolitan Board of Works (Money) Act, 1880, to make a loan to a vestry or district board constituted under the Metropolis Management Act, 1855, or to a board of guardians of a union or parish wholly or for the greater part in the metropolis as defined

by the Metropolis Management Act, 1855, or to the managers of the Metropolitan Asylum District, or to the School Board for London, or to any corporation, body of commissioners, burial board, or other public body, and are empowered, in order to raise money for any such loan, to create consolidated stock, and the loan is repayable within thirty years from the date of the loan, the Board, instead of raising money for any such loan by the creation of consolidated stock, may use for any such loan any moneys for the time being forming part of the consolidated loans fund, and not required for the payment of the dividends on consolidated stock.

21. The Board may, as part of their general expenses, pay all costs, charges, and expenses incurred by them preliminary to, in, and incidental to their opposition to the East London Waterworks Company Act, 1881, in Parliament.

22. Notwithstanding anything in this Act or in any other Act relating to the Board contained, the Board, with the consent of the Treasury, may from time to time, as they think fit, raise any part of the moneys which they are by this Act authorised to raise, not exceeding in the whole the sum of five hundred thousand pounds, by the issue of bills under this Act.

23. A bill under this Act (in this Act referred to as a "Metropolitan bill") shall be a bill in form prescribed by a regulation made in pursuance of this Act for the payment of the principal sum named therein, in the manner and at the date therein mentioned, so that the date be not less than three nor more than twelve months from the date of the bill.

Interest shall be payable in respect of a Metropolitan bill at such rate and in such manner as the Board, with the consent of the Treasury, may direct.

24. All moneys raised by the issue of any Metropolitan bills shall be paid to the Board, and shall be expended by them for the purposes for which the same are by this Act authorised to be raised respectively. The principal money and interest expressed in any Metropolitan bill to be payable shall be charged on the consolidated rate, and shall be payable out of the said rate, or, as regards principal, out of moneys raised by the creation of consolidated stock under this Act, for the purpose for which such principal money has been expended, and, as regards interest, out of the consolidated loans fund.

25. With respect to the issue of Metropolitan bills the following provisions shall have effect:

- (1.) Metropolitan bills shall be issued under the authority of a warrant sealed by the Board and countersigned on behalf of the Treasury:
- (2.) Each Metropolitan bill shall be for the amount directed by the Board:
- (3.) Each Metropolitan bill shall be sealed by the Board, the sealing being attested by the clerk in his own name.

26. The Board may from time to time, with the consent of the Treasury, make, and when made rescind, alter, and add to, regulations for carrying into effect the provisions of this Act with respect to Metropolitan bills, and in particular—

- (1.) For regulating (subject to the provisions of this Act) the preparation, form, mode of issue, mode of payment, and cancellation of Metropolitan bills:
- (2.) For regulating the issue of a new Metropolitan bill in lieu of one defaced, lost, or destroyed:
- (3.) For preventing, by the use of counterfoils or of a special description of paper or otherwise, fraud in relation to the Metropolitan bills:
- (4.) For the proper discharge to be given upon the payment of a Metropolitan bill.

Every regulation purporting to be made in pursuance of this section shall be deemed to be within the powers of this Act, and shall have effect as if it were enacted in this Act.

27. For the purpose of paying off the principal money of any Metropolitan bills the Board may raise any sum which they are by this Act empowered to raise by the creation of consolidated stock for the purposes for which such principal money has been expended, not exceeding the amount of such principal money; but, save as aforesaid, the powers given to the Board by this Act to raise moneys for any purposes by the creation of consolidated stock shall be suspended to the amounts and for the periods to and for which moneys are for the time being authorised by the Treasury to be raised for such purposes respectively by the issue of Metropolitan bills.

28. Sections eight, nine, ten, and eleven of the Act of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to indiotable offences by forgery" (which sections relate to the forgery of and other frauds relating to Exchequer bills), shall apply to the Metro-

politan bills, and shall have effect as if "Exchequer bill" in those sections included "Metropolitan bill."

29. The Board may enter into such arrangements with any bank approved by the Treasury for carrying into effect the provisions of this Act with respect to the issue of the Metropolitan bills, and to the payment of the principal sum named therein, and to all matters relating thereto, and for the proper remuneration of such bank with reference thereto, as they may think proper and as may be approved by the Treasury.

30. The limitation on the borrowing power of the Board contained in section thirty-eight of the Metropolitan Board of Works (Loans) Act, 1869, shall not extend to moneys raised by the Board for purposes mentioned in this Act.

31. All sums received by the Board in respect of interest on or principal of any loan made by them under this Act shall be carried to the consolidated loans fund.

32. During the year ending the thirty-first day of December one thousand eight hundred and eighty-two the Board shall not (except for such temporary period, not exceeding six months, as the Treasury may from time to time sanction) raise otherwise than in conformity with and to the extent mentioned in this Act any money under any powers of borrowing conferred upon the Board either by this Act or any other Act whatsoever: Provided always, that the limitations contained in this section and in section twenty-seven of the Act of 1880 shall not extend to limit or control the raising of moneys under the authority of section thirty-four of the Metropolitan Board of Works (Loans) Act, 1869, or of section eight of the Metropolitan Board of Works (Loans) Act, 1875, for the purposes in the said sections respectively mentioned.

33. From and after the passing of this Act the Board shall cause copies of the minutes of all proceedings of the Board, with the names of the members who attend each meeting, to be from time to time printed, and to be filed and kept under their direction at the principal office of the Board, and a copy of such minutes so printed and filed shall be signed by the members present, or any two of them, and all matters contained in any such copy so printed and filed, purporting to be so signed as aforesaid, shall be received as evidence without proof of any meeting of the Board having been duly convened or held, or of the presence at any such meeting of the persons named in any such printed copy as being present thereat.

or of such persons being members of the Board, or of the signature of any person by whom any such copy purports to be signed, all which matters shall be presumed until the contrary be proved; and the copies of the minutes so printed, filed, and signed as aforesaid shall be in substitution for the entries of the proceedings of the Board, after the passing of this Act, required to be made, and for the books containing the same required to be kept under the direction of the Board by section sixty of the Metropolitan Management Act, 1855, and all the provisions of the said Act referring

or relating to such books as aforesaid shall, as to the minutes of proceedings of the Board after the passing of this Act, refer and relate to the said copies of the minutes so printed, filed, and signed as aforesaid, as though they were the books by the said section sixty required to be kept.

34. Section fifteen of the Metropolitan Board of Works (Loans) Act, 1875, shall be read as if the words one hundred and fifty pounds were substituted for the words one hundred guineas.

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FIRST SCHEDULE.

NEW MONEY POWERS CONFERRED IN THIS ACT.

Section of Act.	Purpose.	Amount.
SUPPLEMENTAL UP TO 31st DEC. 1881.		
4	Fire Brigade (amount already sanctioned, £30,000) - - -	£ s. d. 10,000 0 0
5 {	Thames Embankments, Queen Victoria Street, Northumber-	
	land Avenue, and Sun Street - - - - -	3,000 0 0
6 {	The Obelisk on the Victoria Embankment - - - - -	2,000 0 0
	Main Drainage - - - - -	100,000 0 0
UP TO 31st DEC. 1882.		
7 {	Hackney Commons, should the Various Powers Bill become law - - - - -	34,200 0 0
	Metropolitan Commons Supplemental Act, 1881, and purchase of land adjoining Brook Green - - - - -	12,000 0 0
8 {	Metropolitan Bridges Bill, should it become law - - -	760,000 0 0
1st JAN. TO 31st DEC. 1882.		
9 {	Minor Improvements and Contributions to Local Improve-	
	ments - - - - -	100,000 0 0
	Streets under Act of 1872 - - - - -	30,134 18 9
	Parks, commons, and open spaces - - - - -	15,000 0 0
	Thames Embankments, Queen Victoria Street, Northumber-	
	land Avenue, and Sun Street - - - - -	12,000 0 0
	Obelisk on Victoria Embankment - - - - -	
	Bridges (including Commutation of Pensions) - - - - -	50,000 0 0
10 {	Fire Brigade - - - - -	30,000 0 0
	Streets under Act of 1877 - - - - -	1,500,000 0 0
11 {	Thames River, Prevention of Floods - - - - -	90,000 0 0
	Artizans Dwellings - - - - -	300,000 0 0
12 {	Main Drainage - - - - -	400,000 0 0
	Loans to vestries and district boards - - - - -	200,000 0 0
13 {	Loans to guardians - - - - -	150,000 0 0
	Loans to managers of Metropolitan Asylum District - - -	50,000 0 0
16 {	Loans to School Board for London - - - - -	600,000 0 0
	Loans to other public bodies - - - - -	100,000 0 0
18 {		£4,548,334 18 9

Section of Act.	Purpose.	Amount.		
	AMOUNTS included above which are re-grants of borrowing power previously granted :	£	s.	d.
	Minor Improvements and Contributions to Local Improvements - - -	63,303	5	0
	Fire Brigade - - - - -	5,005	11	4
	Parks, commons, and open spaces - - -	15,000	0	0
	Bridges (including Commutation of Pensions) - - - - -	50,000	0	0
	Thames River (Prevention of Floods) - -	86,934	2	4
	Artizans Dwellings - - - - -	300,000	0	0
	Main Drainage - - - - -	123,989	10	3
	Streets under Act of 1872 - - - - -	30,134	18	9
	Streets under Act of 1877 - - - - -	1,500,000	0	0
	Thames Embankments, Queen Victoria Street, Northumberland Avenue, and Sun Street - - - - -	1,588	8	3
	Obelisk on Victoria Embankment - - -	7,000	0	0
	Loans to vestries and district boards -	168,750	0	0
	Loans to guardians - - - - -	47,900	0	0
	Loans to managers of Metropolitan Asylum District - - - - -	—		
	Loans to School Board for London - -	600,000	0	0
	Loans to other public bodies - - - -	85,100	0	0
				3,084,705 15 11
	New borrowing powers :			
	For Board £1,265,379 2s. 10d. }	—		£1,463,629 2 10
	For loans 198,250 }			

SECOND SCHEDULE.

PARKS AND OPEN SPACES ACTS.

PART I.

The Finsbury Park Act, 1857, 20 & 21 Vict. c. cl.

Southwark Park Act, 1864, 27 Vict. c. iv.

Gardens in Towns Protection Act, 1863, 26 Vict. c. 13.

Leicester Square Act, 1874, 37 Vict. c. x.

Open Spaces (Metropolis) Act, 1877, 40 & 41 Vict. c. 35.

Metropolitan Commons Act, 1866, 29 & 30 Vict. c. 122.

Metropolitan Commons Act, Amendment Act, 1869, 32 & 33 Vict. c. 107.

Metropolitan Commons Act, 1878, 41 & 42 Vict. c. 71.

Metropolitan Commons Supplemental Act, 1871 (Blackheath), 34 and 35 Vict. c. lvii.

The Metropolitan Commons Supplemental Act, 1871 (Shepherd's Bush), 34 & 35 Vict. c. lxiii.

Metropolitan Commons Supplemental Act, 1872 (Hackney Commons), 35 & 36 Vict. c. xliii.

Metropolitan Commons Supplemental Act, 1873 (Tooting Beck Common), 36 & 37 Vict. c. lxxxvi.

Metropolitan Board of Works Various Powers Act, 1875 (Tooting Graveney Common), 38 & 39 Vict. c. clxxix., sec. 14.

Hampstead Heath Act, 1871, 34 & 35 Vict. c. lxxvii.

Metropolitan Commons Supplemental Act, 1877 (Clapham Common and Bostall Heath), 40 & 41 Vict. c. cci.

The Plumstead Common Act, 1878, 41 & 42 Vict.
c. cxlv.

Wormwood Scrubs Act, 1879, 42 & 43 Vict.
c. clx.

Metropolitan Commons Supplemental
Act, 1881, (Brook Green, Eel Brook
Common, &c.), c. xviii.

PART II.

Embankment Acts.

The Thames Embankment (North) Act, 1862,
25 & 26 Vict. c. 93., 26 & 27 Vict. c. 45.

Thames Embankment (South) Act, 1863,
26 & 27 Vict. c. 75.

Thames Embankment Amendment Act,
1864, 27 & 28 Vict. c. cxxxv., 27 & 28 Vict.
c. 61.

The Thames Embankment (North and South)
Act, 1868, 31 & 32 Vict. c. cxi.,
31 & 32 Vict. c. 43.

Thames Embankment (Chelsea) Act, 1868,
31 & 32 Vict. c. cxxxv., 32 & 33 Vict.
c. 134.

Thames Embankment (North) Act, 1870,
33 & 34 Vict. c. xcii.

Thames Embankment (North) Act, 1872,
35 & 36 Vict. c. lxvi.

Thames Embankment (Land) Act, 1873,
36 & 37 Vict. c. 40.

Thames Embankment (South) Act, 1873,
36 Vict. c. vii.

Charing Cross and Victoria Embankment
Approach Act, 1873, 36 & 37 Vict. c. c.

Metropolitan Board of Works Various
Powers Act, 1876 (Chelsea Embank-
ment), 39 & 40 Vict. c. lxxix.

CHAP. 49.

Land Law (Ireland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

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2. *Prohibition of subdividing and subletting.*
3. *Devolution of tenancies.*
4. *Increase of rent to attract statutory conditions or enhance price on sale.*
5. *Incidents of tenancy subject to statutory conditions.*

Amendment of Law as to Compensation for Disturbance.

6. *Repeal of 33 & 34 Vict. c. 46. s. 3. (in part), and s. 13.*

Amendment of Law as to Compensation for Improvements.

7. *Amendment of 33 & 34 Vict. c. 46. as to compensation for improvements.*

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An Act to further amend the Law relating to the Occupation and Ownership of Land in Ireland, and for other purposes relating thereto.

(22d August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

ORDINARY CONDITIONS OF TENANCIES.

1. The tenant for the time being of every holding, not herein-after specially excepted from the provisions of this Act, may sell his tenancy for the best price that can be got for the same, subject to the following regulations and subject also to the provisions in this Act contained with respect to the sale of a tenancy subject to statutory conditions :

- (1.) Except with the consent of the landlord, the sale shall be made to one person only :
- (2.) The tenant shall give the prescribed notice to the landlord of his intention to sell his tenancy :
- (3.) On receiving such notice the landlord may purchase the tenancy for such sum as may be agreed upon, or in the event of disagreement may be ascertained by the court to be the true value thereof :
- (4.) Where the tenant shall agree to sell his tenancy to some other person than the landlord, he shall, upon informing the landlord of the name of the purchaser, state in writing therewith the consideration agreed to be given for the tenancy :
- (5.) If the tenant fails to give the landlord the notice or information required by the foregoing sub-sections, the court may, if it think fit and that the just interests of the landlord so require, declare the sale to be void :
- (6.) Where the tenancy is sold to some other person than the landlord, the landlord may within the prescribed period refuse on

reasonable grounds to accept the purchaser as tenant:

In case of dispute the reasonableness of the landlord's refusal shall be decided by the court: Provided that the landlord's objection shall be conclusive in the case of any tenancy in a holding where the permanent improvements in respect of which, if made by the tenant or his predecessors in title, the tenant would have been entitled to compensation under the provisions of the Landlord and Tenant (Ireland) Act, 1870, as amended by this Act, have been made by the landlord or his predecessors in title, and have been substantially maintained by the landlord and his predecessors in title, and not by the tenant or his predecessors in title:

(7.) Where the tenancy is subject to any such conditions as are in this Act declared to be statutory conditions, and the sale is made in consequence of proceedings by the landlord for the purpose of recovering possession of the holding by reason of the breach of any of such conditions, the court shall grant to the landlord out of the purchase moneys payment of any debt, including arrears of rent, due to him by the tenant and compensation by way of damages for any injury he may have sustained from the tenant by breach of any of such conditions, except the condition relating to the payment of rent:

(8.) Where permanent improvements on a holding have been made by the landlord or his predecessors in title solely or by him or them jointly with the tenant or his predecessors in title, or have been paid for by the landlord or his predecessors in title, and the landlord, on the application of the tenant, consents that his property in such improvements shall be sold along with the tenancy, and the same is so sold accordingly, the purchase money shall be apportioned by the court as between the landlord's property in such improvements and the tenancy, and the part of the purchase money so found to represent the landlord's property in such improvements (but subject to any set-off claimed by the tenant) shall be paid to the landlord; and such improvements so sold shall be deemed to have been made by the purchaser of the tenancy:

(9.) Where a tenant sells his tenancy to any person other than the landlord, the landlord may at any time within the prescribed period give notice both to the outgoing tenant and to the purchaser of any sums which he may claim from the outgoing tenant for arrears of rent or other breaches

of the contract or conditions of tenancy. And

(a.) If the outgoing tenant does not within the prescribed period give notice to the purchaser that he disputes such claims or any of them, the purchaser shall out of the purchase moneys pay the full amount thereof to the landlord; and

(b.) If the outgoing tenant disputes such claims or any of them, the purchaser shall out of the purchase moneys pay to the landlord so much (if any) of such claims as the outgoing tenant admits, and pay the residue of the amount claimed by the landlord into court in the prescribed manner.

Until the purchaser has satisfied the requirements of this sub-section, it shall not be obligatory on the landlord to accept the purchaser as his tenant:

(10.) Where any purchase money has been paid into court it shall be lawful for the landlord and also for the outgoing tenant and for the purchaser respectively to make applications to the court in respect of such purchase money; and the court shall hear and determine such applications, and make such order or orders thereupon as to the court may seem just:

(11.) A tenant who has sold his tenancy on any occasion of quitting his holding shall not be entitled on the same occasion to receive compensation for either disturbance or improvements; and a tenant who has received compensation for either disturbance or improvements on any occasion of quitting his holding shall not be entitled on the same occasion to sell his tenancy:

(12.) The tenant of a holding subject to the Ulster tenant-right custom or to a usage corresponding to the Ulster tenant-right custom may sell his tenancy either in pursuance of that custom or usage, or in pursuance of this section, but he shall not be entitled to sell partly under the custom or usage and partly under the provisions of this section:

(13.) If the tenant of a tenancy subject to the Ulster tenant-right custom or to a usage corresponding to the Ulster tenant-right custom sells his tenancy in pursuance of this section, the tenancy, unless purchased by the landlord, shall continue to be subject to such custom or usage:

(14.) Where a sale of a tenancy is made under a judgment or other process of law against the tenant, or for the payment of the debts of the deceased tenant, the sale shall be made in the prescribed manner,

subject to the conditions of this section, so far as the same are applicable:

(15.) Any sum payable to the landlord out of the purchase moneys of the tenancy under this section shall be a first charge upon the purchase moneys:

(16.) A landlord, on receiving notice of an intended sale of the tenancy, may, if he is not desirous of purchasing the tenancy otherwise than as a means of securing the payment of any sums due to him for arrears of rent or other breaches of the contract or conditions of tenancy, give notice within the prescribed time of the sum claimed by him in respect of such arrears and breaches, such sum falling agreement between the landlord and tenant to be determined by the court, and should the tenant determine to proceed with the sale, may claim to purchase the tenancy for such sum if no purchaser is found to give the same or a greater sum; and the landlord, if no purchaser be found within the prescribed time to give the same or a greater sum, shall be adjudged the purchaser of the tenancy at that sum.

2. The tenant from year to year of a tenancy to which this Act applies shall not, without the consent of the landlord in writing, subdivide his holding or sublet the same or any part thereof.

Agistment or the letting of land for the purpose of temporary depasturage, or the letting in consore of land for the purpose of its being solely used and which shall be solely used for the growing of potatoes or other green crops, the land being properly manured, shall not be deemed a sub-letting for the purposes of this Act.

3. Where the tenant of a tenancy to which this Act applies has bequeathed his tenancy to one person only, and the personal representatives of the tenant have assented to the bequest, such person shall have the same claim to be accepted as tenant by the landlord as if the tenancy had been sold to him by the testator.

Where the tenant of any such tenancy has bequeathed his tenancy to more than one person or dies intestate, then, if his personal representatives serve notice on the landlord nominating some one of the legatees or persons entitled under the Statutes of Distribution to his personal estate, to succeed to the tenancy, such person shall have the same claim to be accepted by the landlord as if the tenancy had been sold to him by the testator or intestate, and in default of such notice the personal representatives shall, if the landlord requires

a sale to be made, within twelve months after the death of the tenant sell the tenancy, and in case of their default the landlord may sell the same under the direction of the court.

Where the tenant of a tenancy dies intestate and without leaving any person entitled to his personal estate, or any part thereof, such tenancy shall pass to the landlord, subject, however, to the debts and liabilities of the deceased tenant.

4. Where the landlord demands an increase of rent from the tenant of a present tenancy (except where he is authorised by the court to increase the same as hereafter in this Act mentioned) or demands an increase of rent from the tenant of a future tenancy beyond the amount fixed at the beginning of such tenancy, then,

(1.) Where the tenant accepts such increase, until the expiration of a term of fifteen years from the time when such increase was made (in this Act referred to as a statutory term) such tenancy shall (if it so long continues to subsist) be deemed to be a tenancy subject to statutory conditions, with such incidents during the continuance of the said term as are in this Act in that behalf mentioned:

(2.) Where the tenant of any future tenancy does not accept such increase and sells his tenancy, the same shall be sold subject to the increased rent, and in addition to the price paid for the tenancy he shall be entitled to receive from his landlord the amount (if any) by which the court may, on the application of the landlord or tenant, decide the selling value of his tenancy to have been depreciated below the amount which would have been such selling value if the rent had been a fair rent, together with such further sum (if any) as the court may award in respect of his costs and expenses in effecting such sale:

(3.) Where the tenant does not accept such increase and is compelled to quit the tenancy by or in pursuance of a notice to quit, but does not sell the tenancy, he shall be entitled to claim compensation as in the case of disturbance by the landlord:

(4.) The tenant of a present tenancy may in place of accepting or declining such increase apply to the court in manner hereafter in this Act mentioned to have the rent fixed.

5. A tenant shall not, during the continuance of a statutory term in his tenancy, be

compelled to pay a higher rent than the rent payable at the commencement of such term, and shall not be compelled to quit the holding of which he is tenant except in consequence of the breach of some one or more of the conditions following (in this Act referred to as statutory conditions); that is to say,

- (1.) The tenant shall pay his rent at the appointed time;
- (2.) The tenant shall not, to the prejudice of the interest of the landlord in the holding, commit persistent waste by the dilapidation of buildings or, after notice has been given by the landlord to the tenant not to commit or to desist from the particular waste specified in such notice, by the deterioration of the soil;
- (3.) The tenant shall not, without the consent of his landlord in writing, subdivide his holding or sublet the same or any part thereof, or erect or suffer to be erected thereon, save as in this Act provided, any dwelling-house otherwise than in substitution for those already upon the holding at the time of the passing of this Act:

Agistment or the letting of land for the purpose of temporary depasturage, or the letting in conacre of land for the purpose of its being solely used and which shall be solely used for the growing of potatoes or other green crops, the land being properly manured, shall not be deemed a sub-letting for the purposes of this Act.

- (4.) The tenant shall not do any act whereby his tenancy becomes vested in an assignee in bankruptcy;
- (5.) The landlord, or any person or persons authorised by him in that behalf (he or they making reasonable amends and satisfaction for any damage to be done or occasioned thereby), shall have the right to enter upon the holding for any of the purposes following (that is to say):
 - Mining or taking minerals, or digging or searching for minerals;
 - Quarrying or taking stone, marble, gravel, sand, brick clay, fire clay, or slate;
 - Cutting or taking timber or turf, save timber and other trees planted by the tenant or his predecessors in title, or that may be necessary for ornament or shelter, and save also such turf as may be required for the use of the holding;
 - Opening or making roads, fences, drains, and watercourses;
 - Passing and re-passing to and from the sea shore with or without horses and carriages for exercising any right of

property or royal franchise belonging to the landlord;

Viewing or examining at reasonable times the state of the holding and all buildings or improvements thereon;

Hunting, shooting, fishing, or taking game or fish, and if the landlord at the commencement of the statutory term so requires, then as between the landlord and tenant the right of shooting and taking game, and of fishing and taking fish shall belong exclusively to the landlord, subject to the provisions of the Ground Game Act, 1880, and the provisions of the Act twenty-seventh and twenty-eighth Victoria, chapter sixty-seven, shall extend where such right of shooting and taking game belongs exclusively to the landlord as though such exclusive right were reserved by the landlord to himself by deed. The word "game" for the purposes of this subsection means hares, rabbits, pheasants, partridges, quails, landrails, grouse, woodcock, snipe, wild duck, widgeon, and teal;

And the tenant shall not persistently obstruct the landlord, or any person or persons authorised by him in that behalf as aforesaid, in the exercise of any right conferred by this subsection.

During the continuance of a statutory term, all mines and minerals, coals and coal pits, subject to such rights in respect thereof as the tenant, under the contract of tenancy subsisting immediately before the commencement of the statutory term, was lawfully entitled to exercise, shall be deemed to be exclusively reserved to the landlord;

- (6.) The tenant shall not on his holding, without the consent of his landlord, open any house for the sale of intoxicating liquors.

Nothing contained in this section shall prejudice or affect any ejectment for nonpayment of rent instituted by a landlord whether before or after the commencement of a statutory term, in respect of rent accrued due for a holding before the commencement of such term.

During the continuance of a statutory term in a tenancy, save as herein-after provided, the court may, on the application of the landlord, and upon being satisfied that he is desirous of resuming the holding or part thereof for some reasonable and sufficient purposes having relation to the good of the holding or of the estate, including the use of the ground as building ground, or for the benefit of the labourers in

respect of cottages, gardens, or allotments, or for the purpose of making grants or leases of sites for churches or other places of religious worship, schools, dispensaries, or clergymen's or schoolmasters residences, authorise the resumption thereof by the landlord upon such conditions as the court may think fit, and require the tenant to sell his tenancy in the whole or such part to the landlord upon such terms as may be approved by the court, including full compensation to the tenant.

Provided that the rent of any holding subject to statutory conditions may be increased in respect of capital laid out by the landlord under agreement with the tenant to such an amount as may be agreed upon between the landlord and tenant.

Amendment of Law as to Compensation for Disturbance.

6. There shall be repealed so much of section three of the Landlord and Tenant (Ireland) Act, 1870, as provides for the scale of compensation, and so much of the same section as declares that in no case shall the compensation exceed the sum of two hundred and fifty pounds, and so much of the same section as declares that a tenant in a higher class of the scale may at his option claim compensation under a lower class, and so much of the same section as prohibits tenants of holdings valued at such sums as are in the said section mentioned, and making such claims for compensation for disturbance as are in the said section mentioned, from being entitled to make separate or additional claims for improvements other than permanent buildings and reclamation of waste land, and the said section three shall hereafter be read as if from such section were omitted the words "for the loss which the court shall find to be sustained by him" by reason of quitting his holding," so that the said section shall be read as providing that the tenant therein mentioned shall be entitled to such compensation as the court, in view of all the circumstances of the case, shall think just, subject to the scale of compensation herein-after mentioned.

The compensation payable under the said section three in the case of a tenant disturbed in his holding by the act of a landlord after the passing of this Act shall be as follows in the case of holdings—

Where the rent is thirty pounds or under, a sum not exceeding seven years rent :

Where the rent is above thirty pounds and not exceeding fifty pounds, a sum not exceeding five years rent :

Where the rent is above fifty pounds and not exceeding one hundred pounds, a sum not exceeding four years rent :

Where the rent is above one hundred pounds and not exceeding three hundred pounds, a sum not exceeding three years rent :

Where the rent is above three hundred pounds and not exceeding five hundred pounds, a sum not exceeding two years rent :

Where the rent is above five hundred pounds, a sum not exceeding one year's rent.

Any tenant in a higher class of the scale may, at his option, claim compensation under a lower class, provided such compensation shall not exceed the sum to which he would be entitled under such lower class on the assumption that the rent of his holding was reduced to the sum (or where two sums are mentioned, the higher sum) stated in such lower class.

From and after the passing of this Act the thirteenth section of the Landlord and Tenant (Ireland) Act, 1870, shall be and the same is hereby repealed.

Amendment of Law as to Compensation for Improvements.

7. A tenant on quitting the holding of which he is tenant shall not be deprived of his right to receive compensation for improvements under the Landlord and Tenant (Ireland) Act, 1870, by reason only of the determination by surrender or otherwise of the tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title, and the acceptance by him or them of a new tenancy.

Where in tracing a title for the purpose of obtaining compensation for improvements, it appears that an outgoing tenant has surrendered his tenancy in order that some other person may be accepted by the landlord as tenant in his place, and such other person is so accepted as tenant, the outgoing tenant shall not be precluded from being deemed the predecessor in title of the incoming tenant by reason only of such surrender of tenancy by him.

The court, in adjudicating on a claim for compensation for improvements made before any such change of tenancy or of tenants, shall take into consideration all the circumstances under which such change took place, and shall admit, reduce, or disallow altogether such claim as to the court may seem just.

A flax scutching mill otherwise suitable to the holding on which it is erected shall not be deemed to be unsuitable to the holding on which it is erected by reason only that it is available for purposes beyond those of the holding on which it is situate.

PART II.

INTERVENTION OF COURT.

8. (1.) The tenant of any present tenancy to which this Act applies, or such tenant and the landlord jointly, or the landlord, after having demanded from such tenant an increase of rent which the tenant has declined to accept, or after the parties have otherwise failed to come to an agreement, may from time to time during the continuance of such tenancy apply to the court to fix the fair rent to be paid by such tenant to the landlord for the holding, and thereupon the court, after hearing the parties, and having regard to the interest of the landlord and tenant respectively, and considering all the circumstances of the case, holding, and district, may determine what is such fair rent.

(2.) The rent fixed by the court (in this Act referred to as the judicial rent) shall be deemed to be the rent payable by the tenant as from the period commencing at the rent day next succeeding the decision of the court.

(3.) Where the judicial rent of any present tenancy has been fixed by the court, then, until the expiration of a term of fifteen years from the rent day next succeeding the day on which the determination of the court has been given (in this Act referred to as a statutory term), such present tenancy shall (if it so long continue to subsist) be deemed to be a tenancy subject to statutory conditions, and having the same incidents as a tenancy subject to statutory conditions consequent on an increase of rent by a landlord, with this modification, that, during the statutory term in a present tenancy consequent on the first determination of a judicial rent of that tenancy by the court, application by the landlord to authorise the resumption of the holding or part thereof by him for some purpose having relation to the good of the holding or of the estate, shall not be entertained by the court, unless—

(a.) Such present tenancy has arisen at the expiration of a judicial lease, or of a lease existing at the time of the passing of this Act, and originally made for a term of not less than thirty-one years; or

(b.) It is proved to the satisfaction of the court that before the passing of this Act the reversion expectant on the determination of a lease of the holding was purchased by the landlord or his predecessors in title with the view of letting or otherwise disposing of the land for building purposes on the determination of such lease, and that it is *bonâ fide* required by him for such purpose.

(4.) Where an application is made to the court under this section in respect of any

tenancy, the court may, if it think fit, disallow such application where the court is satisfied that on the holding in which such tenancy subsists the permanent improvements in respect of which, if made by the tenant or his predecessors in title, the tenant would have been entitled to compensation under the provisions of the Landlord and Tenant (Ireland) Act, 1870, as amended by this Act, have been made by the landlord or his predecessors in title, and have been substantially maintained by the landlord and his predecessors in title, and not made or acquired by the tenant or his predecessors in title.

(5.) On the occasion of any application being made to the court under this section to fix a judicial rent in respect of any holding which is not subject to the Ulster tenant-right custom, or an usage corresponding to the Ulster tenant-right custom, the landlord and tenant may agree to fix, or in the case of dispute the court may fix, on the application of either landlord or tenant, a specified value for the tenancy; and, where such value has been fixed, then if at any time during the continuance of the statutory term the tenant gives notice to the landlord of his intention to sell the tenancy, the landlord may purchase the tenancy on payment to the tenant of the amount of the value so fixed, together with the value of any improvements made by the tenant since the time at which such value was fixed, but subject to deduction in respect of any damage caused by dilapidation of buildings or deterioration of soil since the time at which the value was so fixed.

(6.) Subject to rules made under this Act, the landlord and tenant of any present tenancy to which this Act applies, may, at any time if such tenancy is not subject to a statutory term, or if the tenancy is subject to a statutory term, then may, during the last twelve months of such term, by writing under their hands, agree and declare what is then the fair rent of the holding; and such agreement and declaration on being filed in court in the prescribed manner, shall have the same effect and consequences in all respects as if the rent so agreed on were a judicial rent fixed by the court under the provisions of this Act.

(7.) A further statutory term shall not commence until the expiration of a preceding statutory term, and an alteration of judicial rent shall not take place at less intervals than fifteen years.

(8.) During the currency of a statutory term an application to the court to determine a judicial rent shall not be made except during the last twelve months of the current statutory term.

(9.) No rent shall be allowed or made payable in any proceedings under this Act in respect

of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title.

(10.) The amount of money or money's worth that may have been paid or given for the tenancy of any holding by a tenant or his predecessors in title, otherwise than to the landlord or his predecessors in title, shall not of itself, apart from other considerations, be deemed to be a ground for reducing or increasing the rent of such holding.

9. Where the court, on the hearing of an application of either landlord or tenant respecting any matter under this Act, is of opinion that the conduct of either landlord or tenant has been unreasonable, or that the one has unreasonably refused any proposal made by the other, the court may do as follows:

It may refuse to accede to the application, or may accede to the same, subject to conditions to be performed by either landlord or tenant, or may impose on either party to the application the payment of the costs or the greater part of the costs of any proceedings, and generally may make such order in the matter as the court thinks most consistent with justice.

PART III.

EXCLUSION OF ACT BY AGREEMENT.

Judicial Leases.

10. The landlord and tenant of any ordinary tenancy and the landlord and proposed tenant of any holding to which this Act applies which is not subject to a subsisting tenancy, may agree, the one to grant and the other to accept a lease for a term of thirty-one years or upwards (in this Act referred to as a judicial lease), on such conditions and containing such provisions as the parties to such lease may mutually agree upon, and such lease, if sanctioned by the court, after considering the interest of the tenant, and where such lease is made by a limited owner, the interest of all persons entitled to any estate or interest in the holding subsequent to the estate or interest of such limited owner, shall be deemed to be substituted for the former tenancy, if any, in the holding; and the tenancy shall during the continuance of such lease be regulated by the provisions of that lease alone, and shall not be deemed to be a tenancy to which this Act applies.

At the expiration of a judicial lease made to

the tenant of a present tenancy and for a term not exceeding sixty years the lessee shall be deemed to be the tenant of a present ordinary tenancy from year to year at the rent and subject to the conditions of the lease, so far as such conditions are applicable to such tenancy.

Fixed Tenancies.

11. The landlord and tenant of any tenancy may agree that such tenancy shall become a fixed tenancy within the meaning of this Act, and such fixed tenancy upon being established shall be substituted for the tenancy previously existing in the holding, and shall not be deemed to be a tenancy to which this Act applies.

12. A fixed tenancy shall be a tenancy held upon such conditions as may be agreed upon between the landlord and tenant establishing such tenancy, and in the case of a landlord who is a limited owner the court shall approve after considering the interest of all persons entitled to any estate or interest in the holding subsequent to the estate or interest of such limited owner, subject to the following restrictions; that is to say,

- (1.) The tenant shall pay a fee-farm rent which may or may not be subject to re-valuation by the court at such intervals of not less than fifteen years as may be agreed upon between the landlord and tenant, the rent on any such re-valuation being such as the court, after hearing the parties, and having regard to the interests of the landlord and tenant respectively, and considering all the circumstances of the case, holding, and district, shall determine to be fair; and
- (2.) The tenant shall not be compelled to quit his holding except on breach of some one or more of the conditions in this Act declared to be statutory conditions.

PART IV.

PROVISIONS SUPPLEMENTAL TO PRECEDING PARTS.

Miscellaneous.

13. (1.) Where proceedings are or have been taken by the landlord to compel a tenant to quit his holding, the tenant may sell his tenancy at any time before but not after the expiration of six months from the execution of a writ or decree for possession in an ejectment for non-payment of rent and at any time before but not after the execution of such writ or decree in any ejectment other than for nonpayment of rent; and any such tenancy so sold shall be and be deemed to be a subsisting tenancy notwithstanding.

standing such proceedings, without prejudice to the landlord's rights, in the event of the said tenancy not being redeemed within said period of six months; and, if any judgment or decree in ejectment has been obtained before the passing of this Act, such tenant may within the same periods respectively apply to the court to fix the judicial rent of the holding, but subject to the provisions herein contained such application shall not invalidate or prejudice any such judgment or decree, which shall remain in full force and effect.

(2.) Where the sale of any tenancy is delayed by reason of any application being made to the court or for any other reasonable cause, the court may, on the application of the tenant, and on such terms and conditions as the court may direct, enlarge the time during which the tenant may exercise his power of sale, or in case of ejectment for nonpayment of rent redeem the tenancy.

(3.) Where any proceedings for compelling the tenant of a present tenancy to quit his holding shall have been taken before or after an application to fix a judicial rent and shall be pending before such application is disposed of, the court before which such proceedings are pending shall have power, on such terms and conditions as the court may direct, to postpone or suspend such proceedings until the termination of the proceedings on the application for such judicial rent; and the pendency of any such proceedings for compelling the tenant to quit his holding shall not interfere with the power of the court to fix such rent, or with any right of the tenant resulting from the rent being so fixed; and in such case any order made by the court for fixing the rent shall operate in the same manner as if such order had been made on the day of the date of application.

Provided, that proceedings shall not be taken by a landlord to compel a tenant to quit his holding for breach of any statutory condition, save as follows:

- (a.) Where the condition broken is a condition relating to payment of rent, then by ejectment subject to the provisions of the statutes relating to ejectment for nonpayment of rent; and
 - (b.) Where the condition broken is any other statutory condition, then by ejectment founded on notice to quit.
- (4.) Where a notice to quit is served by a landlord upon a tenant for the purpose of compelling the tenant to quit his holding during the continuance of a statutory term in his tenancy in consequence of the breach by the tenant of any statutory condition other than the condition relating to payment of rent, the tenant may, at any time before the commence-

ment of an ejectment founded on such notice to quit, apply to the land commission, and after the commencement, or at the hearing of any such ejectment, may apply to the court in which the ejectment is brought, for an order restraining the landlord from taking further proceedings to enforce such notice to quit.

If the land commission or court to which such application is made are of opinion that adequate satisfaction for the breach of such condition can be made by the payment of damages to the landlord, and that the tenant may justly be relieved from the liability to be compelled to quit his holding in consequence of such breach, the commission or court may make an order restraining further proceedings on the notice to quit, upon the payment by the tenant of such sum for damages as they shall then, or after due inquiry, award to the landlord in satisfaction for the breach of the statutory condition, together with the costs incurred by the landlord in respect to the notice to quit and the proceedings subsequent thereto.

If the land commission or court are of opinion that no appreciable damage has accrued to the landlord from the breach of such condition, and that the tenant may justly be relieved as aforesaid, they may make an order restraining further proceedings on the notice to quit, upon such terms as to costs as they may think just.

(5.) The service of a notice to quit, to enforce which no proceedings are taken by the landlord, or the proceedings to enforce which are restrained by the court, shall not operate to determine the tenancy.

(6.) A tenant compelled to quit his holding during the continuance of a statutory term in his tenancy, in consequence of the breach by the tenant of any statutory condition, shall not be entitled to compensation for disturbance.

14. The court on being satisfied that the tenant of any holding within the jurisdiction of the court has died, and that the tenancy of such tenant ought to be sold under this Act, and that there is no legal personal representative of such tenant, or no legal personal representative whose services are available for the purpose of selling the tenancy, may, on such terms and conditions, if any, as they may think fit, appoint any proper person to be administrator of the deceased tenant, limited to the purposes of such sale, and such limited administrator shall, for the purpose of selling the tenancy, represent the deceased tenant in the same manner as if the tenant had died intestate, and administration had been duly granted to such limited administrator of all

the personal estate and effects of the deceased tenant.

Such limited administrator shall pay to the landlord, out of the purchase money, any sums due to the landlord by the deceased tenant in respect of his tenancy, and may pay the residue of the purchase money to a general administrator (if any) or into court.

15. If in the case of any holding the estate of the immediate landlord for the time being is determined during the continuance of any tenancy from year to year, whether subject or not subject to statutory conditions, the next superior landlord for the time being shall, for the purposes of this Act, during the continuance of such tenancy stand in the relation of immediate landlord to the tenant of the tenancy, and have the rights and be subject to the obligations of an immediate landlord.

16. A tenancy for a year certain created after the passing of this Act shall, for the purposes of this Act and of the Landlord and Tenant (Ireland) Act, 1870, be deemed to be a tenancy from year to year.

A tenant holding under a tenancy less than a yearly tenancy created after the passing of this Act shall have the same rights under this Act as a yearly tenant, except where land is let merely for temporary convenience or to meet a temporary necessity.

17. Where the tenant of a holding by virtue of his tenancy exercises, in common with other persons, over uninclosed land a right of pasturing or turning out cattle or other animals, or exercises a right of cutting and taking turf in common with other persons (which other persons, together with the tenant, are in this section referred to as commoners), then if such holding becomes subject to a statutory term the court may, during the continuance of such term, on the application of the landlord, or of any commoner, by order restrain the tenant from exercising his right of pasture or cutting or taking turf in any manner other than that in which it may be proved to the court that he is, under the circumstances and according to the ordinary usage which has prevailed with the express or implied consent of the landlord amongst the commoners, reasonably entitled to exercise the same.

18. Any person prohibited under this Act from letting or sub-letting a holding may, after service of the prescribed notice upon the landlord, with the sanction of the court, and with power for the court to prescribe such terms as to rent and otherwise as the court thinks just, let any portion of land in a situa-

tion to be approved by the landlord, or failing such approval to be determined by the court, with or without dwelling-houses thereon to or for the use of labourers *bonâ fide* employed and required for the cultivation of the holding, and such letting shall not be deemed to be a sub-letting within the meaning of this Act, or to be a letting prohibited by this Act; and notwithstanding such sub-letting the tenant shall for the purposes of this Act be deemed to be still in occupation of the holding.

Provided, that the land comprised in each letting shall not exceed half an acre in extent, and that where the holding contains not more than twenty-five acres of tillage land, the number of such lettings shall not exceed one, and that where the holding contains more than twenty-five acres of tillage land, but not more than fifty acres of such land, the number of such lettings shall not exceed two; and so in proportion to the acreage of tillage land in the holding after fifty acres.

19. Where an application is made to the court for the determination of a judicial rent in respect of any holding, the court, if satisfied that there is a necessity for improving any existing cottages or building any new cottages, or assigning to any such cottage an allotment not exceeding half an acre, for the accommodation of the labourers employed on such holding, may, if it thinks fit, in making the order determining such rent, add thereto the terms as to rent and otherwise on which such accommodation for labourers is to be provided by the person making the application.

Where upon any such application the court requires the tenant of the holding to improve any existing cottage, or to build any new cottage, such tenant shall be deemed to be a person to whom a loan may be made under the Landed Property Improvement (Ireland) Acts for the improvement or building of dwellings for labourers, as if such person were an owner within the meaning of the seventh section of the Act of the session of the tenth and eleventh years of the reign of Her present Majesty, chapter thirty-two; but any such loan may be made for a less sum than the sum of one hundred pounds.

20. A tenancy to which this Act applies shall be deemed to have determined whenever the landlord has resumed possession of the holding either on the occasion of a purchase by him of the tenancy, or of default of the tenant in selling, or by operation of law, or reverter, or otherwise. Provided that:

(1.) The surrender to the landlord of a tenancy for the purpose of the acceptance or admission of a tenant or otherwise by

way of transfer to a tenant shall not be deemed to be a determination of the tenancy:

- (2.) Where the landlord has resumed possession of a tenancy from a present tenant, he may, if he thinks fit so to do, reinstate such tenant in his holding as a present tenant; and thereupon such tenancy shall again become subject to all the provisions of this Act which are applicable to present tenancies;

Provided always, that the landlord and tenant may at the time of such reinstatement agree on the rent to be paid by such tenant, and in such case such agreement shall have the same effect as if the rent so agreed on were a judicial rent fixed by the court under the provisions of this Act;

- (3.) Where a present tenancy in a holding is purchased by the landlord from the tenant in exercise of his right of pre-emption under this Act, and not on the application or by the wish of the tenant, or as a bidder in the open market, then if the landlord within fifteen years from the passing of this Act re-lets the same holding to another tenant, the same shall be subject from and after the time when it has been so re-let, to all the provisions of this Act which are applicable to present tenancies;

- (4.) A tenant holding under the Ulster tenant-right custom, or a usage corresponding to the Ulster tenant-right custom, shall be entitled to the benefit of such custom, notwithstanding any determination of his tenancy by breach of a statutory condition, or of an act or default of the same character as the breach of a statutory condition.

Whenever a present tenancy is sold in consequence of a breach by the tenant, after the passing of this Act, of a statutory condition, or, in the case of a tenancy not subject to statutory conditions, of an act or default on the part of a tenant, after the passing of this Act, which would, in a tenancy subject to such conditions, have constituted a breach thereof, the purchaser or his successors in title in such tenancy shall not at any time thereafter be entitled to apply to the court under this Act to fix a judicial rent for the holding; but this provision shall not prejudice or affect the right of such purchaser or his successors to hold at such judicial rent during the residue of such statutory term, if any, as the holding may then be subject to, under the provisions of this Act.

21. Any leases or other contracts of tenancy existing at the date of the passing of this Act, except yearly tenancies and tenancies less than

yearly tenancies, which said existing leases and contracts of tenancies (except as aforesaid) are in this section referred to as existing leases, shall remain in force to the same extent as if this Act had not passed, and holdings subject to such existing leases shall be regulated by the lawful provisions contained in the said leases, and not by the provisions relating to tenancies in that behalf contained in this Act: Provided that at the expiration of such existing leases, or of such of them as shall expire within sixty years after the passing of this Act, the lessees, if bonâ fide in occupation of their holdings, shall be deemed to be tenants of present ordinary tenancies from year to year, at the rents and subject to the conditions of their leases respectively, so far as such conditions are applicable to tenancies from year to year; but this provision shall not apply where a reversionary lease of the holding has been bonâ fide made before the passing of this Act; and provided also that where it shall appear to the satisfaction of the court that the landlord desires to resume the holding for the bonâ fide purpose of occupying the same as a residence for himself, or as a home farm in connexion with his residence, or for the purpose of providing a residence for some member of his family, the court may authorise him to resume the same accordingly, in the manner and on the terms provided by the fifth section of this Act with respect to the resumption of a holding by a landlord: Provided always, that if the holding so resumed shall be at any time within fifteen years after such resumption re-let to a tenant, the same shall be subject, from and after the time of its being so re-let, to all the provisions of this Act which are applicable to present tenancies.

On the termination of any such existing lease in any holding which if it had been held from year to year would have been subject to the Ulster tenant-right custom, or any usage corresponding therewith, the person who would have been entitled to make a claim under the first or second section of the Landlord and Tenant (Ireland) Act, 1870, in respect of the same holding shall be entitled to do so notwithstanding that the holding was held under any such lease, but this proviso shall not apply to leases in which there is contained a provision expressly excluding the Ulster tenant-right custom or a usage corresponding therewith.

In any case in which the court shall be satisfied that since the passing of the Landlord and Tenant (Ireland) Act, 1870, the acceptance by a tenant from year to year of a lease of his holding containing terms which, in the opinion of the court, were at the time of such acceptance unreasonable or unfair to the tenant.

having regard to the provisions of the said Act, was procured by the landlord by threat of eviction or undue influence, the court may, upon the application of the tenant made within six months after the passing of this Act, declare such lease to be void as and from the date of the application or order, and upon such terms as to costs or otherwise as to the court shall seem just; and thereupon the tenant shall as and from such date be deemed to be the tenant of a present ordinary tenancy from year to year at the rent mentioned in such lease. Any person aggrieved by the decision of the court in any proceedings under this section may, by leave of the court, which leave shall be granted unless the court shall consider the appeal frivolous or vexatious, appeal to Her Majesty's Court of Appeal in Ireland, and the decision of the said Court of Appeal shall be final and conclusive.

Extent of Power to contract out of Act.

22. A tenant whose holding or the aggregate of whose holdings is valued under the Act relating to the valuation of rateable property in Ireland at an annual value of not less than one hundred and fifty pounds, shall be entitled by writing under his hand to contract himself out of any of the provisions of this Act or of the Landlord and Tenant (Ireland) Act, 1870.

Where the tenancy in a holding subject to the Ulster tenant-right custom or to any corresponding usage, has been purchased by the landlord from the tenant by voluntary purchase before the passing of this Act, then, if at the date of the passing of this Act the owner of any such holding is in actual occupation thereof, it shall be lawful, in the case of the first tenancy created in the holding after the passing of this Act, for the parties to the contract creating the same, by writing under their hands, to provide that such tenancy shall be exempt from the provisions of section one of this Act.

Save as in this section mentioned any provision contained in any lease or contract of tenancy or other contract made after the passing of this Act, which provision is inconsistent with any of the foregoing provisions of this Act or with any of the provisions of the Landlord and Tenant (Ireland) Act, 1870, shall be void.

Limited Owner.

23. A landlord being a limited owner, as defined by the twenty-sixth section of the Landlord and Tenant (Ireland) Act, 1870, may exercise under the foregoing provisions of this Act any powers which he might exercise if he were an absolute owner, with this exception, that except in the case of a body corporate, commissioners, or other like body, a limited

owner shall not grant a judicial lease or create a fixed tenancy without the sanction of the court. Any fines or principal moneys arising from the exercise of such powers shall be dealt with in manner provided by the Lands Clauses Consolidation Acts hereafter in this Act defined with respect to the purchase money or compensation coming to parties having limited interests.

In the case of any holding subject to mortgage the prescribed notice of any agreement between landlord and tenant for granting a judicial lease or creating a fixed tenancy of such holding under the foregoing provisions of this Act, shall be served upon the mortgagee, and the mortgagee shall be entitled to intervene in such proceedings in the prescribed manner and subject to the prescribed conditions.

PART V.

ACQUISITION OF LAND BY TENANTS, RECLAMATION OF LAND, AND EMIGRATION.

Acquisition of Land by Tenants.

24. (1.) The land commission, out of moneys in their hands, may, if satisfied with the security, advance sums to tenants for the purpose of enabling them to purchase their holdings, as follows, that is to say,—

(a.) Where a sale of a holding is about to be made by a landlord to a tenant in consideration of the payment of a principal sum,

the land commission may advance to the tenant for the purposes of such purchase, any sum not exceeding three fourths of the said principal sum.

(b.) Where a sale of a holding is about to be made by a landlord to a tenant in consideration of the tenant paying a fine and engaging to pay to the landlord a fee farm rent,

the land commission may advance to the tenant for the purposes of such purchase, any sum not exceeding one half of the fine payable to the landlord.

Provided that no advance shall be made by the land commission under this section on a holding subject to a fee farm rent, where the amount of such fee farm rent exceeds seventy-five per cent. of the rent which, in the opinion of the land commission, would be a fair rent for the holding.

(2.) Sales by landlords to tenants may on the application of either landlord or tenant be negotiated and completed through the medium of the land commission at a fixed price or percentage, according to a scale to be settled from time to time by the land commission with the consent of the Treasury.

(3.) Where an estate is subject to incumbrances, or any doubt arises as to the title, the land commission, if satisfied with the indemnity or terms given by the landlord, may themselves indemnify the tenant against any such incumbrances, or any right, title, or interest adverse to or in derogation of the title of the landlord, and any such indemnity of the land commission shall be a charge upon the Consolidated Fund or the growing produce thereof.

25. A landlord of a holding, being a limited owner as defined by the twenty-sixth section of the Landlord and Tenant (Ireland) Act, 1870, may by agreement, subject to the provisions of the Lands Clauses Consolidation Acts (except so much of the same as relates to the purchase of lands otherwise than by agreement), sell and convey such holding to the tenant, and may exercise to the same extent as if he were an absolute owner the power of permitting any sum not exceeding one-fourth in amount of the price which the tenant may pay as purchase money, to remain as a charge upon such holding secured by a mortgage, and in case of any advance being made by the land commission under the provisions of this Act to the tenant for the purchase of such holding any such mortgage shall be subject to any charge in favour of the land commission for securing such advance; and any such mortgage and the principal moneys secured thereby shall be deemed to be part of the purchase money or compensation payable in respect of the purchase of such holding, and shall be dealt with accordingly in manner provided by the Lands Clauses Consolidation Acts; and in the construction of the said Acts for the purposes of this section the expression "the special Act" shall be construed to mean this Act, and the expression "the promoters of the undertaking" shall be construed to mean the tenant.

26. (1.) Any estate may be purchased by the land commission for the purpose of reselling to the tenants of the lands comprised in such estate their respective holdings, if the land commission are satisfied with the expediency of the purchase, and are further satisfied that a competent number of the tenants are able and willing to purchase their holdings from the land commission.

(2.) The sale by the land commission of a holding to the tenant thereof may be made either in consideration of a principal sum being paid as the whole price (whether paid immediately or by means of such advance as in this part of this Act mentioned) or in consideration of a fine and of a fee farm rent, with this qualification, that the amount of the fee farm rent shall not exceed seventy-five per cent. of the

rent which in the opinion of the land commission would be a fair rent for the holding.

(3.) For the purposes of this section a competent number of tenants means a body of tenants who are not less in number than three fourths of the whole number of tenants on the estate, and who pay in rent not less than two thirds of the whole rent of the estate, and of whom a number, comprising not less than one half of the whole number of tenants on the estate, are able and willing to pay the whole price of their holdings, either immediately or by means of such advances as in this part of this Act mentioned.

The condition as to three fourths of the number of tenants may be relaxed on special grounds with the consent of the Lords Commissioners of the Treasury, but so that in no case less than half the number of tenants shall be able and willing to purchase.

(4.) The land commission may advance to a tenant proposing to pay the whole price of his holding any sum not exceeding seventy-five per cent. of the said price, and to a tenant purchasing subject to a fee farm rent a sum not exceeding one half of the amount of the fine payable by the tenant.

(5.) In sales by the land commission to tenants in pursuance of this section, a separate charge shall not be made for any expenses relating to the purchase, sale, or conveyance of the property, but such expenses shall be included in the price or fine payable by the purchaser.

The land commission may, if they are satisfied with the indemnity or terms offered or given by the vendor, purchase for the purposes of this section an estate subject to incumbrances, or an estate subject to any right, title, or interest adverse to or in derogation of the title of the vendor, and the land commission may indemnify any person to whom they may sell any holding under this section against any such incumbrances or the enforcement of any such right, title, or interest, and such indemnity shall be a charge on the Consolidated Fund or the growing produce thereof.

27. Where the land commission have purchased an estate, they may sell any parcels which they do not sell to the tenants thereof in such manner as they think fit, in consideration either of a principal sum as the whole price, or of a fine and a fee farm rent, or partly in one way and partly in the other.

The land commission may advance to any purchaser of a parcel under this section, on the security of such parcel, one half of the principal sum paid as the whole price or of the fine.

The provisions of this part of this Act with respect to the charges for expenses and to the

mode in which sales are to be made and to the indemnity which the land commission may give to the purchaser shall, except so far as the land commission otherwise direct, apply to the sale of a parcel in pursuance of this section in like manner as if the purchaser had been the tenant of the holding at the time of his making the purchase.

28. (1.) Any advance made by the land commission for the purpose of supplying money for the purchase of a holding from a landlord or of a holding or parcel from the land commission, shall be repaid by an annuity in favour of the land commission for thirty-five years of five pounds for every hundred pounds of such advance, and so in proportion for any less sum.

(2.) Every such advance shall be secured to the commission either in such manner as may be agreed on between the commission and the person to whom the advance is made, and as the commission think sufficient, or in manner provided by Part III. of the Landlord and Tenant (Ireland) Act, 1870, as amended by the Landlord and Tenant (Ireland) Act, 1872, in like manner in all respects as if the same were such an advance as is mentioned in those Acts, and as if the land commission were the Board therein mentioned, and as if the person receiving the advance were a tenant or purchaser therein mentioned.

(3.) Any person liable to pay an annuity in this section mentioned may redeem the same, or any part thereof, or may pre-pay any instalments thereof in such manner and on such terms as is provided by section fifty-one of the Landlord and Tenant (Ireland) Act, 1870, or in such other manner, and on such other terms, as the Treasury may from time to time approve, having regard to the due repayment of the loan and the protection of the land commission against loss by the said loan.

29. (1.) The land commission shall not purchase a leasehold estate under this part of this Act, unless the lease is for lives or years renewable for ever, or is for a term of years of which not less than sixty are unexpired at the time when the sale is made, or unless the land commission have purchased some greater right or interest in the estate in which the leasehold would be merged:

Provided that—

(a.) This part of this Act shall not empower the owner of a leasehold holding under a lease containing a prohibition against alienation to sell such leasehold unless such prohibition is determined or is waived; and

(b.) Nothing in this section shall prevent the purchase of an estate by reason only of a small part thereof being leasehold.

(2.) Any body corporate, public company, trustees for charities, commissioners or trustees for collegiate or other public purposes, or any person having a limited interest in an estate or any right or interest therein, may sell the same to the land commission, and for the purpose of the purchase by the land commission of any estate or any right or interest therein the Lands Clauses Consolidation Acts (except so much as relates to the purchase of land otherwise than by agreement) shall be incorporated with this Act, and in construing those Acts for the purposes of this section the "special Act" shall be construed to mean this Act, and "the promoters of the undertaking" shall be construed to mean the land commission, and "land" shall be construed to include any right or interest in land.

(3.) For the purpose of this Act "the Lands Clauses Consolidation Acts" means the Lands Clauses Consolidation Act, 1845, as amended by the Lands Clauses Consolidation Acts Amendment Act, 1860.

(4.) Any sale of a holding to a tenant by a landlord, also any sale to a tenant of a holding by the land commission in pursuance of this part of this Act, may be made either in pursuance of Part II. of the Landlord and Tenant (Ireland) Act, 1870, or in such manner as the land commission may think expedient; and for the purpose of the application of the said Part II., "price" in section thirty-two of the Landlord and Tenant (Ireland) Act, 1870, shall be deemed to include a fine and a fee farm rent as well as a principal sum, and the enactments relating to the distribution of the price shall apply with the necessary modifications.

30. (1.) As between the land commission and the proprietor for the time being of any holding for the purchase of which the land commission have advanced money in pursuance of this part of this Act, the following conditions shall be imposed so long as such holding is subject to any charge in respect of an annuity in favour of the land commission; that is to say,

(a.) The holding shall not be subdivided or let by such proprietor without the consent of the land commission until the whole charge due to the land commission has been repaid:

(b.) Where the proprietor subdivides or lets any holding or part of a holding in contravention of the foregoing provisions of this section, the land commission may cause the holding to be sold:

(c.) Where the title to the holding is divested from the proprietor by bankruptcy, the land commission may cause the holding to be sold :

(d.) Where, on the decease of the proprietor, the holding would by reason of any devise, bequest, intestacy, or otherwise, become sub-divided the land commission may require the holding to be sold within twelve months after the death of the proprietor to some one person, and if default is made in selling the same, the land commission may cause the same to be sold.

(2.) The land commission may cause any holding which under this section they can cause to be sold, or any part of such holding, to be sold by public auction or private contract, and subject to any conditions of sale they may think expedient, and after such notice of the time, place, terms, and conditions of such sale, as they think just and expedient ; and the land commission may convey such holding to the purchaser in like manner in all respects as if the holding had been vested in the land commission.

(3.) The land commission shall apply the proceeds derived from such sale in payment, in the first instance, of all moneys due to them in respect of the holding, and in redemption on the terms specified in section fifty-one of the Landlord and Tenant (Ireland) Act, 1870, of any annuity charged on the said holding, in favour of the commission, or of so much thereof as remains unpaid, and of all expenses incurred by the land commission in relation to such sale or otherwise with respect to the holding, and shall pay the balance to the persons appearing to the land commission to be for the time being entitled to receive the same.

Provided, that in respect of any holding which is subject to any charge in respect of an annuity in favour of the Board of Works, created in pursuance of the Landlord and Tenant (Ireland) Act, 1870, the said Board may, if they shall see fit, at any time during the continuance of such charge, upon the application of the person for the time being liable to pay the same, declare such holding to be subject to the conditions imposed by this Act on a holding subject to any charge in respect of an annuity in favour of the land commission ; and thenceforth so much of the forty-fourth and forty-fifth sections of the said Landlord and Tenant (Ireland) Act, 1870, as prohibits, without the consent of the Board, the alienation, assignment, sub-division, or sub-letting of a holding charged as in the said section mentioned, and declares that in the event of such prohibition being contravened

the holding shall be forfeited to the Board, and also so much of section two of the Landlord and Tenant (Ireland) Act, 1872, as relates to the sale of holdings in lieu of forfeiture, shall, as to the holding in respect of which such a declaration has been made, be repealed, and the conditions imposed by this Act on a holding subject to any charge in respect of an annuity in favour of the land commission shall apply to the holding in respect whereof the said declaration has been made in the same manner as if the said conditions had been made applicable to the said last-mentioned holding by the said Acts of one thousand eight hundred and seventy and one thousand eight hundred and seventy-two, and the said Board had thereby been authorised to enforce the said conditions.

Reclamation of Land, and Emigration.

31. (1.) The Treasury may authorise the Board of Works to advance from time to time out of any moneys in their hands to companies, if they are satisfied with the security, such sums as the Treasury think expedient for the purpose of the reclamation or improvement of waste or uncultivated land or foreshores, drainage of land, or for building of labourers dwellings, or any other works of agricultural improvement.

(2.) The Treasury may authorise the Board of Works to make advances for like purposes to an occupier of land, when satisfied that the tenancy or other security which he may have to offer is such as to insure repayment of principal and interest within such number of years as the Treasury may fix, or when the landlord joins the occupier in giving such security.

Any advance to and occupier under this subsection shall be subject to the provisions of the Landed Property Improvement (Ireland) Acts, so far as the Treasury may declare the same to be applicable, and shall have priority over all charges and incumbrances whatever upon the tenancy of such occupier, except rent, unless the landlord is a party to the advance, and agrees to postpone the rent to it ; but before such advance is made one month's previous notice thereof shall be given in a newspaper circulating in the district within which the said holding is situated, and in such other manner as the Board of Works may prescribe ; and such advance shall not have priority over any charge or incumbrance of which the Board of Works may have had notice in writing given them before making the advance.

(3.) The Board of Works shall not make to any company in pursuance of this section any advances exceeding in the whole the sums which such company may, within such period

as may be determined by the Board of Works, have advanced or expended out of their own moneys for some one of the purposes of this section, nor any advances without proper security that those advances shall be expended for such purposes as aforesaid in addition to the sums advanced or expended by the company out of their own moneys.

(4.) Advances made by the Board of Works to a company in pursuance of this section shall be made repayable within such periods and at such rate of interest as are set forth in a minute of the Treasury made on the sixteenth day of August, one thousand eight hundred and seventy-nine, with reference to loans to which section two of the Public Works Loans Act, 1879, applies, or as the Treasury may from time to time fix in pursuance of that section, and save as regards such periods and rate of interest the enactments relating to loans made by the Board of Works for the like purposes to those above in this section mentioned shall, so far as is consistent with this section, apply in like manner as if an advance under this section were a loan made in pursuance of those enactments.

32. The land commission may from time to time, with the concurrence of the Treasury, and on being satisfied that a sufficient number of people in any district desire to emigrate, enter into agreements with any person or persons having authority to contract on behalf of any state or colony or public body or public company with whose constitution and security the land commission may be satisfied, for the advance by the commission by way of loan, out of the moneys in their hands, of such sums as the commission may think it desirable to expend in assisting emigration especially of families and from the poorer and more thickly populated districts of Ireland. Such agreements shall contain such provisions relative to the mode of the application of the loans and the securing and repayment thereof to the commission, and for securing the satisfactory shipment, transport, and reception of the emigrants, and for other purposes, as the commission with the concurrence of the Treasury approve. Such loans shall be made repayable within the periods and at the rate of interest within and at which advances by the Board of Works for the purpose of the reclamation or improvement of land are directed by this Act to be made repayable: Provided always, that there shall not be expended by virtue of the authority hereby given a greater sum than two hundred thousand pounds in all, nor a greater sum than one-third part thereof in any single year.

Supplemental Provisions.

33. The Treasury may from time to time, as they think fit, issue the sums required for advances or purchases of estates by the land commission under this part of this Act not exceeding the sums annually granted by Parliament for the purpose; and sections twelve, thirteen, fourteen, and fifteen of the Public Works Loans (Ireland) Act, 1877, shall apply in like manner as if they were herein enacted, with the substitution of "Land Commission" for "the Commissioners of Public Works," and as if the said sums required by the land commission were the loans in the said sections mentioned.

34. (1.) The land commission before buying any estate shall reasonably satisfy themselves that a resale can be effected without loss.

(2.) The land commission upon purchasing any estate shall certify to the Treasury that they are satisfied with the matters of which they are by this section, or by any other provision of this part of this Act, required to be satisfied before such purchase, and such certificate shall be conclusive evidence to any purchaser that they were so satisfied and that the purchase was made in accordance with this Act.

(3.) An advance made by the land commission to a purchaser of a holding or of any parcel of land, in respect of any one purchase by him under this Act whether from the landlord or from the land commission, shall not exceed three thousand pounds, unless the commission report to the Treasury that by reason of special circumstances they deem it expedient to make an advance not exceeding five thousand pounds, in which case they may make such advance with the approval of the Treasury.

(4.) The land commission shall, from time to time, by sale by auction, or in such other manner as may be allowed by the Treasury, dispose of all fee farm rents for the time being vested in them.

(5.) The land commission shall in purchasing estates, in making advances, in dealing with the funds that come into their possession, and in accounting for the same, and generally in the performance of their duties under this part of this Act, conform to any directions, whether given on special occasions or by general rule or otherwise, which may from time to time be given to them by the Treasury, and shall from time to time report as the Treasury may direct all matters which may be transacted by the land commission.

(6.) All sums received by the commission as repayments of any advance, and all sums received by the commission for fees, per-

centages, rents, or otherwise shall, except so far as they may be applied under directions from the Treasury in payment of expenses, be paid into the Exchequer.

35. All powers exercisable by the Board of Works under the Landlord and Tenant (Ireland) Act, 1870, and the Landlord and Tenant (Ireland) Act, 1872, in relation to the purchase by tenants of their holdings shall, after the passing of this Act, and subject to the provisions of this Act, be transferred to and may be exercised by the land commission, and the said Acts and any enactments amending the same so far as they relate to the matter aforesaid shall be construed as if the land commission were substituted for the Board: Provided that this section shall not affect or interfere with any of the powers of the Board of Works in relation to any transactions which are completed before the passing of this Act or which the Board declare are being carried into effect at the passing of this Act.

36. In fixing the purchase moneys, fines, rents, fees, per-centages, and other sums to be charged or made payable to the land commission in respect of transactions under this part of this Act care shall be taken to fix the same in such manner as to make the amount resulting therefrom, as nearly as can be estimated, not less than the amount required to defray the expenses.

PART VI.

COURT AND LAND COMMISSION.

Description of Court and Proceedings.

37. (1.) The expression "The Court" as used in this Act shall mean the civil bill court of the county where the matter requiring the cognizance of the court arises.

(2.) Where a matter requiring the cognizance of the court arises in respect of a holding situate within the jurisdiction of more than one civil bill court, any civil bill court within the jurisdiction of which any part of the holding is situate may take cognizance of the matter.

(3.) Any proceedings which might be instituted before the civil bill court may, at the election of the person taking such proceedings, be instituted before the land commission, and thereupon the land commission shall, as respects such proceedings, be deemed to be the court.

(4.) Where proceedings have been commenced in the civil bill court any party thereto may, within the prescribed period, apply to the land commission to transfer such pro-

ceedings from the civil bill court to the land commission; and thereupon the land commission may order the same to be transferred accordingly.

(5.) The court shall have jurisdiction in respect of all disputes between landlords and tenants arising under this Act.

(6.) In determining any question relating to a holding, the court may direct an independent valuer to report to the court his opinion on any matter the court may desire to refer to such valuer, such report to be accompanied with a statement, if so directed, of all such facts and circumstances as may be required for the purpose of enabling the court to form a judgment as to the subject-matter of such report. The court may or may not, as it thinks fit, adopt the report of such valuer, and it may make such order with respect to the costs incurred in respect of such report as it thinks just.

38. There shall be incorporated with this Act the following provisions of the Landlord and Tenant (Ireland) Act, 1870, as if the purposes therein referred to included the purposes of this Act; that is to say,

- (1.) Section twenty-three, relating to the powers of the judge of the civil bill court; and section twenty-five, relating to the court of arbitration;
- (2.) Section forty, relating to the apportionment of rents, and in that section rents shall include any rent payable to the Crown;
- (3.) Section fifty-nine, relating to administration on death of tenant;
- (4.) Section sixty, containing provisions as to married women;
- (5.) Section sixty-one, containing provisions as to other persons under disability;
- (6.) Section sixty-two, relating to additional sittings of civil bill court;
- (7.) Section sixty-four, relating to power to appoint a substitute in civil bill court if judge cannot attend.

39. There shall be paid, out of moneys to be provided by Parliament, to clerks of the peace appointed to their office before the fourteenth day of August one thousand eight hundred and seventy-seven, and who have not accepted any permanent office under the County Officers and Courts (Ireland) Act, 1877, and also to clerks of the Crown and peace who, under the provisions of the sixteenth section of the said Act have elected to continue to practise as solicitors, such annual sums, by way of remuneration for any additional duties imposed on them by this Act,

as the Lord Lieutenant, with the consent of the Treasury, may direct.

Notwithstanding the conditions imposed by any other Act upon the grant of a pension to a county court judge, it shall be lawful for the Lord Lieutenant, with the concurrence of the Lord Chancellor and of the Treasury, at any time before the first day of January one thousand eight hundred and eighty-four, to grant to any county court judge now entitled to practise at the bar who shall show to the satisfaction of the Lord Lieutenant and the Treasury that the discharge of the additional duties imposed on him by this Act would deprive him of professional emoluments which, if this Act had not been passed, he would have received such special retiring pension, not exceeding two-thirds of his salary, as having regard to the circumstances of each case, shall appear to the Lord Lieutenant and the Treasury to be reasonable.

Arbitration.

40. Any matter capable of being determined by the court under this Act, may, if the parties so agree, be decided by arbitration, and an arbitration shall be conducted by the court of arbitration in manner provided by the Landlord and Tenant (Ireland) Act, 1870, and where the amount of rent is decided by arbitration, such rent shall for the purposes of this Act be deemed to be the judicial rent.

Appointment and Proceedings of Land Commission.

41. A land commission shall be constituted under this Act consisting of a judicial commissioner and two other commissioners.

The judicial commissioner, and every successor in his office, shall be a person who at the date of his appointment is a practising barrister at the Irish bar of not less than ten years standing.

The judicial commissioner for the time being shall forthwith on his appointment become an additional judge of the Supreme Court of Judicature in Ireland with the same rank, salary, tenure of office, and right to retiring pension as if he had been appointed a puisne judge of one of the common law divisions of the High Court of Justice.

He may be required by order of the Lord Lieutenant in Council to perform any duties which a judge of the said Supreme Court of Judicature is by law required to perform; but, unless so required, he shall not be bound to perform any of such duties.

The first judicial commissioner shall be Mr. Serjeant O'Hagan.

If any vacancy occurs in the office of the judicial commissioner by death, resignation,

incapacity, or otherwise, Her Majesty may, by warrant under the Royal Sign Manual, appoint some other qualified person to fill the vacancy.

The two commissioners, other than the judicial commissioner, shall respectively hold their offices for seven years next succeeding the passing of this Act.

If during the said period of seven years a vacancy occurs in the office of any of such other commissioners by death, resignation, incapacity, or otherwise, Her Majesty may by warrant under the Royal Sign Manual appoint some other fit person to fill such vacancy, but the person so appointed shall hold his office only until the expiration of the said period of seven years.

The first commissioners, other than the judicial commissioner, shall be Mr. Edward Falconer Litton and Mr. John E. Vernon.

42. The land commission under this Act shall be a body corporate, with a common seal, and a capacity to acquire and hold land for the purposes of this Act, and shall be styled "The Irish Land Commission."

Judicial notice shall be taken by all courts of justice of the corporate seal of the land commission, and any order or other instrument purporting to be sealed with it shall be received as evidence without further proof.

43. The Lord Lieutenant may from time to time, with the consent of the Treasury as to number, appoint and by Order in Council remove assistant commissioners, who shall have the prescribed qualifications and hold office for the prescribed times.

The central office of the land commission shall be in Dublin, but they may hold sittings in any other part of Ireland.

The land commission may form sub-commissions in any province, particular district or districts of Ireland, and such sub-commissions shall consist of such number of the said assistant commissioners or of a commissioner and one or more assistant commissioners as the land commission may think fit, and the land commission may delegate to any sub-commission such of the powers, except as to appeals, by this Act conferred upon the land commission, as they think expedient, and may from time to time revoke, alter, or modify any powers so delegated to a sub-commission.

44. Any power or act by this Act vested in or authorised to be done by the land commission, except the power of hearing appeals, may be exercised or done by any one member of the land commission or by any sub-commission, with this qualification, that any person

aggrieved by any order of one commissioner, or by any order of a sub-commission, may require his case to be reheard by all three commissioners sitting together, except in the case of the illness or unavoidable absence of any one commissioner, when any such case may be heard by two commissioners sitting together; provided that neither of such two commissioners be the commissioner before whom the case was originally heard.

45. The land commission may from time to time, with the consent of the Lord Lieutenant, appoint and remove a solicitor and a secretary, and such officers, agents, clerks, and messengers as they, with the consent of the Treasury, and subject to such regulations as the Treasury may from time to time prescribe, deem necessary for the purposes of this Act.

They may also, with the consent of the Treasury, employ such actuaries, surveyors, and other persons as they may think fit for the purpose of enabling the land commission to carry into effect any of the provisions of this Act.

46. There shall be paid to each of the commissioners, other than the judicial commissioner, a salary not exceeding three thousand pounds a year, and to the assistant commissioners, secretary, officers, and other persons above mentioned such salaries or remuneration as the Lord Lieutenant may, with the consent of the Treasury, determine.

The salaries of the commissioners, other than the Judicial Commissioner, and of the assistant commissioners, and of all persons employed by the land commission, and all expenses incurred by the land commission in carrying into effect this Act, not otherwise provided for, shall be paid out of moneys provided by Parliament.

47. Any person aggrieved by the decision of any civil bill court with respect to the determination of any matter under this Act or under the Landlord and Tenant (Ireland) Act, 1870, may appeal to the land commission, and such commission may confirm, modify, or reverse the decision of the civil bill court. All appeals to the land commission under this Act shall be heard by all three commissioners sitting together, except in the case of illness or unavoidable absence of any one commissioner, when any appeal may be heard by two commissioners sitting together, one of whom shall be the Judicial Commissioner.

The land commission may determine any appeal in Dublin or may proceed to any place or places in Ireland for the purpose of from time to time determining the same.

The twenty-fourth section of the Landlord and Tenant (Ireland) Act, 1870, is hereby repealed. All appeals under the said section pending at the time of the passing of this Act are hereby transferred to the land commission; and all further proceedings thereon shall be taken in the prescribed manner.

48. (1.) For the purposes of this Act the land commission shall have full power and jurisdiction to hear and determine all matters, whether of law or fact, and shall not be subject to be restrained in the execution of their powers under this Act by the order of any court, nor shall any proceedings before them be removed by certiorari into any court.

(2.) The land commission may of its own motion, or shall on the application of any party to any proceeding pending before it, unless it considers such application frivolous and vexatious, state a case in respect of any question of law arising in such proceedings, and refer the same for the consideration and decision of Her Majesty's Court of Appeal in Ireland.

The land commission may also, in case it thinks fit, permit any party aggrieved by the decision of the land commission in any proceedings to appeal in respect of any matter arising in such proceedings to Her Majesty's Court of Appeal in Ireland; provided that no appeal from the land commission to the Court of Appeal in Ireland shall be permitted in respect of any matter arising under Part V. of this Act, or in respect of any decision as to the amount of fair rent, or any question of value or of damages, or any matter left in the discretion of the land commission.

The decision of the said Court of Appeal on any such question so referred to it shall be final and conclusive.

(3.) The land commission with respect to the following matters; that is to say,

- (a.) Enforcing the attendance of witnesses, (after a tender of their expenses,) the examination of witnesses orally or by affidavit, and the production of deeds, books, papers, and documents; and
 - (b.) Issuing any commission for the examination of witnesses; and
 - (c.) Punishing persons refusing to give evidence or to produce documents, or guilty of contempt in the presence of the land commission or any of them sitting in open court; and
 - (d.) Making or enforcing any order whatever made by them for the purpose of carrying into effect the objects of this Act;
- shall have all such powers, rights, and privileges as are vested in the Chancery Division of the High Court of Justice in Ireland for

such or the like purposes, and all proceedings before the land commission shall in law be deemed to be judicial proceedings before a court of record.

(4.) In determining any question relating to a holding the commission may direct an independent valuer to report to it his opinion on any matter the commission may desire to refer to such valuer, such report to be accompanied with a statement, if so directed, of all such facts and circumstances as may be required for the purpose of enabling the commission to form a judgment as to the subject matter of such report. The commission may or may not, as it thinks fit, adopt the report of such valuer, and it may make any such order with respect to the costs incurred in respect of such report as it thinks just.

(5.) The land commission may review and rescind or vary any order or decision previously made by them, or any of them; but save as by this Act provided every order or decision of the said commission shall be final: Provided always, that any order or decision made by three members of the land commission shall not be reviewed, rescinded, or varied, except by three members of the land commission.

Nothing in this section shall authorise the land commission to determine any question or to exercise any power of a judge in relation to any purchase of an estate by them, or to the purchase of a holding through the medium of the land commission.

49. Where the land commission or any sub-commission hold sittings elsewhere than in Dublin, such land commission or sub-commission may use the courthouses commonly used for civil bill purposes or for the holding of courts of petty sessions, and the officers of the civil bill courts shall, in the prescribed manner and at the prescribed times, be bound to attend the sittings of the said land commission and sub-commissions, and to perform analogous duties to those which they perform in the case of a sitting of the civil bill court.

50. (1.) The land commission shall from time to time circulate forms of application and directions as to the mode in which applications are to be made under this Act, and may from time to time make, and when made may rescind, amend, or add to, rules with respect to the following matters, or any of them :

(a.) The proceedings on the occasion of sales under this Act:

(b.) The proceedings on the occasion of applications to fix judicial rents under this Act and the withdrawal of such applications:

(c.) The proceedings in the civil bill court under this Act :

(d.) The consolidation of cases and the joinder of parties :

(e.) The security (if any) to be given by applicants to, or persons dealing with, the commission :

(f.) The proceedings in appeals under this Act :

(g.) The proceedings in respect of cases stated for the decision of Her Majesty's Court of Appeal in Ireland under this Act :

(h.) The proceedings on the occasion of applications for transfer of cases from the Civil Bill Court to the land commission under this Act :

(i.) The qualifications and tenure of office of assistant commissioners :

(j.) The forms to be used for the purposes of this Act :

(k.) The scale of costs and fees to be charged in carrying this Act into execution, and the taxation of such costs and fees, and the persons by or from whom and the manner in which such costs and charges are to be paid or deducted, subject nevertheless to the sanction of the Treasury as to the amount of fees to be charged :

(l.) The attendance and discharge of duties by the officers of the civil bill courts before the land commission and sub-commissions when holding sittings under this Act :

(m.) The mode in which consents on the part of the land commission or of any landlord, tenant, or other person may be signified under this Act :

(n.) The service of notices on mortgagees and persons interested, and any other matter by this Act, or any part of any Act incorporated herewith, directed to be prescribed :

(o.) As to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may seem to the land commission expedient to make rules for the purpose of carrying this Act or any part of any Act incorporated herewith into effect.

(2.) Any rules made in pursuance of this section shall be judicially noticed in all courts of Her Majesty's dominions.

(3.) Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning or the then next session of Parliament; and if an Address is presented to Her Majesty by either House of Parliament within the next subsequent one hundred days on which the said House shall have sat praying that any such

rule may be annulled, Her Majesty may thereupon by Order in Council annul the same, and the rule so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

(4.) The Public Offices Fees Act, 1879, shall apply to fees payable under this Act.

51. The making of rules and orders prescribing and regulating the mode of service of civil bill processes in ejectment, and for recovery of rent, is hereby declared to be within the provisions of the seventy-ninth section of the County Officers and Courts (Ireland) Act, 1877; and, notwithstanding any other enactment, the service of such processes in the manner prescribed by such rules or orders shall be valid and sufficient.

Whenever an action for the recovery of rent not exceeding twenty pounds or for the recovery of land, whether for nonpayment of rent or for overholding, is brought in the High Court of Justice in Ireland, in any case in which the plaintiff in such action could have sued for the recovery of such rent or land in a civil bill court, the plaintiff in such action shall not be entitled to any costs, unless the judge before whom such action is tried, or the divisional court to which such action is attached, shall by order declare the said plaintiff entitled to costs.

52. Subject to rules made under this Act, it shall be lawful for the party to any proceeding before the land commission or any sub-commission, or, with the leave of such commission or sub-commission, for the father or husband of such party, or for a solicitor of the Supreme Court of Judicature in Ireland (but not a solicitor retained as an advocate by such first-mentioned solicitor), or for a barrister retained by or on behalf of such party and instructed by his or her solicitor, but without any right of exclusive audience or pre-audience, to appear and address such commission or sub-commission and conduct the case subject to such rules and regulations as may be from time to time prescribed.

53. No person being a member of the land commission other than the judicial commissioner, or being an assistant commissioner or employed by the land commission, shall by reason of such membership or employment acquire any right to compensation, superannuation, or other allowance on abolition of office or otherwise.

54. No person being a member of, or holding office under, the land commission, or being an assistant commissioner, shall, during the time that he holds his office, be capable of being elected a member of or sitting in the Commons House of Parliament.

55. The land commission shall once in every year after the year one thousand eight hundred and eighty-one make a report to the Lord Lieutenant as to their proceedings under this Act, and every such report shall be presented to Parliament.

56. The land commission shall from time to time prepare in such form and at such times as the Treasury from time to time direct accounts of their receipts and expenditure, and within six months after the expiration of the year to which the accounts relate the land commission shall transmit the same to the Controller and Auditor General to be audited, certified, and reported upon in conformity with the regulations from time to time made by the Treasury for that purpose, and the accounts, with the reports of the Controller and Auditor General thereon, shall be laid before the House of Commons not later than three months after the date on which they were transmitted for audit if Parliament be then sitting, and if not sitting, within fourteen days after Parliament next assembles.

Provided, that the regulations made by the Treasury under this section shall be laid before the House of Commons within one month of the date thereof, if Parliament be then sitting, and, if not, then within fourteen days after Parliament next assembles, and that such regulations shall not have effect until they have lain for thirty days upon the Table of the House.

PART VII.

DEFINITIONS, APPLICATION OF ACT, AND SAVINGS.

57. In the construction of this Act the following words and expressions shall have the meaning hereby assigned to them, unless there be something in the context repugnant thereto; that is to say,

"Lord Lieutenant" includes the Lord Justices or any other Chief Governor or Governors of Ireland for the time being:

"Treasury" means the Commissioners of Her Majesty's Treasury:

"Board of Works" means the Commissioners of Public Works in Ireland:

"County" includes a riding of a county:

"Contract of tenancy" means a letting or agreement for the letting of land for a term of years or for lives, or for lives and years, or from year to year :

"Tenant" means a person occupying land under a contract of tenancy, and includes the successors in title to a tenant :

Where the tenant sub-lets part of his holding with the consent of his landlord he shall, notwithstanding such sub-letting, be deemed for the purposes of this Act to be still in occupation of the holding.

"Landlord" means the immediate landlord or the person for the time being entitled to receive the rents and profits or take possession of the land held by his tenant, and includes the successors in title to a landlord :

"Holding" during the continuance of a tenancy means a parcel of land held by a tenant of a landlord for the same term and under the same contract of tenancy, and, upon the determination of such tenancy, means the same parcel of land discharged from the tenancy :

"Tenancy" means the interest in a holding of a tenant and his successors in title during the continuance of a tenancy ; and "rent of a tenancy" means the rent for the time being payable by such tenant or some one or more of his successors :

"Present tenancy" means a tenancy subsisting at the time of the passing of this Act or created before the first day of January one thousand eight hundred and eighty-three in a holding in which a tenancy was subsisting at the time of the passing of this Act, and every tenancy to which this Act applies shall be deemed to be a present tenancy until the contrary is proved :

"Future tenancy" means, except as aforesaid, a tenancy beginning after the passing of this Act :

"Ordinary tenancy" means a tenancy to which this Act applies, and which is not a tenancy subject to statutory conditions, or a judicial lease, or a fixed tenancy :

"Sale," "sell," and cognate words, include alienation, and alienate, with or without valuable consideration :

"Ejectment" includes action for recovery of land :

"An estate" means any lands which the land commission may by order declare fit to be purchased as a separate estate for the purposes of this Act :

"Prescribed" means prescribed by rules made in pursuance of this Act :

"Landed Property Improvement (Ireland) Acts" means the Act of the session of the

tenth and eleventh years of the reign of Her present Majesty, chapter thirty-two, intituled "An Act to facilitate the improvement of landed property in Ireland," and any Acts amending or extending the same.

Any words or expressions in this Act which are not hereby defined, and are defined in the Landlord and Tenant (Ireland) Act, 1870, shall, unless there is something in the context of this Act repugnant thereto, have the same meaning as in the last-mentioned Act, and the Landlord and Tenant (Ireland) Act, 1870, except in so far as the same is expressly altered or varied by this Act or is inconsistent therewith, and this Act shall be construed together as one Act.

58. This Act, with the exception of so much thereof as amends the Landlord and Tenant (Ireland) Act, 1870, in respect of compensation for improvements, and with the exception of Part Five of this Act, shall not apply to tenancies in—

- (1.) Any holding which is not agricultural or pastoral in its character, or partly agricultural and partly pastoral ; or
- (2.) Any demesne land, or any land being or forming part of a home farm or any holding ordinarily termed "town-parks" adjoining or near to any city or town which bears an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, and is in the occupation of a person living in such city or town, or the suburbs thereof ; or
- (3.) Any holding let to be used wholly or mainly for the purpose of pasture, and valued under the Acts relating to the valuation of property at an annual value of not less than fifty pounds ; or
- (4.) Any holding let to be used wholly or mainly for the purposes of pasture, the tenant of which does not actually reside on the same, unless such holding adjoins or is ordinarily used with the holding on which such tenant actually resides ; or
- (5.) Any holding which the tenant holds by reason of his being a hired labourer or hired servant ; or
- (6.) Any letting in conacre or for the purposes of agistment or for temporary depasturage ; or
- (7.) Any holding let to the tenant during his continuance in any office, appointment, or employment, or for the temporary convenience or to meet a temporary necessity either of the landlord or tenant : Provided that any such letting made after the passing of this Act shall be by contract in

writing, which shall express the purpose for which such letting is made;

- (8.) Any cottage allotment not exceeding a half of an acre;
- (9.) Any "glebe" as defined by the Act of thirty-eighth and thirty-ninth Victoria, chapter forty-two, which now is, or hereafter shall be held or occupied by any "ecclesiastical persons" as by the same Act defined, and no such ecclesiastical person shall in respect of such glebe be entitled to make any claim for compensation under any of the provisions of the Landlord and Tenant (Ireland) Act, 1870, or of this Act.

59. Where it appears to the court, on the joint application of the landlord and tenant of any holding valued under the Acts relating to the valuation of rateable property in Ireland at a sum not exceeding thirty pounds a year—

That the tenant has paid the whole (or such sum as the landlord may be willing to accept as the equivalent of the whole) of the rent payable in respect of the year of the tenancy expiring on the gale day next before the passing of this Act, and that antecedent arrears are due, the land commission may make, in respect of such antecedent arrears, an advance of a sum not exceeding one year's rent of the holding, and not exceeding half the antecedent arrears, and thereupon the court shall by order declare the holding to be charged with the repayment of the advance to the land commission, by a rentcharge payable half-yearly during the fifteen years from the date specified in the order, and calculated at the rate of eight pounds ten shillings a year for every hundred pounds of the advance.

Whenever in the case of any tenant evicted for nonpayment of rent since the first day of May one thousand eight hundred and eighty, the landlord agrees to re-instate such tenant on the terms in this section set forth, this section shall apply as if such tenant had not been so evicted from his holding.

The charge declared by the order as aforesaid shall have priority over all charges affecting the holding except quit-rent and Crown rent and sums payable to the Commissioners of Public Works or the Commissioners of Church Temporalities in Ireland, and the landlord for the time being of the holding shall pay to the land commission the sum for the time being due on account of such rentcharge.

Every half-yearly amount of such rentcharge shall be deemed to be an addition to the half-

year's rent of the holding (whether a judicial rent or otherwise) due from the tenant to the landlord, and may be recovered by the landlord accordingly.

On the order of the court being made as aforesaid in relation to any holding, all arrears of rent due in respect of that holding on or prior to the gale day next before the passing of this Act shall be deemed to be absolutely released.

The landlord and tenant may agree that any rent paid by the tenant during the twelve months immediately preceding the passing of this Act shall be deemed, for the purposes of this section, to have been paid in respect of the rent due for the then current year, and not in respect of arrears of rent.

Where arrears of rent in respect of a holding are due to some person or persons besides the landlord, the advance made by the land commission under this section shall be rateably distributed by the court amongst the persons entitled thereto.

An application for an advance under this section shall not be made after the twenty-eighth day of February one thousand eight hundred and eighty-two.

The omission or refusal by either landlord or tenant of any holding to join with the other of them in obtaining a loan from the land commission under this section shall not prejudice any other application or proceeding which either of them may make or institute under this Act or the Landlord and Tenant (Ireland) Act, 1870, in relation to the holding.

The land commission may make advances for the purpose of this section out of any moneys for the time being in their hands for the purposes of this Act.

The land commission shall at such time after the expiration of each period of twelve months as the Treasury may from time to time appoint, make up an account showing for the said period of twelve months the amount of all such payments due to them in respect of rentcharges payable to them under this section as they have failed to recover at the expiration of the said period (in this section referred to as payments in arrear), and the Commissioners of Church Temporalities in Ireland shall, out of any moneys at their disposal, pay to the land commission any sums appearing from such account to be due to the land commission. Any such payment by the Commissioners of Church Temporalities in Ireland shall not discharge any person indebted to the land commission in respect of any payments in arrear, and it shall be the duty of the land commission to take any proceedings they may be advised for the recovery of payments in arrear, and to repay to the

Commissioners of Church Temporalities in Ireland any sums so recovered.

60. Any application which a tenant is authorised by this Act to make to the court shall, if made to the court on the first occasion on which it sits after the passing of this Act, have the same operation as if it had been made on the day on which this Act comes into force; and any order made upon such application shall be of the same effect as if it had been made on the day on which this Act comes into force, unless the court otherwise directs; and

the person by whom such application is made shall, if the court thinks just, be in the same position and have the same rights in respect of his tenancy as he would have been in and would have had if the application had been made on the day on which this Act comes into force.

61. This Act shall not apply to England or Scotland.

62. This Act may be cited for all purposes as the Land Law (Ireland) Act, 1881.

CHAP. 50.

Consolidated Fund (No. 4) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of 21,695,712l. out of the Consolidated Fund for the service of the year ending 31st March 1882.*
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of Twenty-one million six hundred and ninety-five thousand seven hundred and twelve pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two.
(22d August 1881.)

Most Gracious Sovereign.

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of

the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two, the sum of twenty-one million six hundred and ninety-five thousand seven hundred and twelve pounds.

2. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sum, any sum or sums not exceeding in the whole the sum of twenty-one million six hundred and ninety-five thousand seven hundred and twelve pounds, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 4) Act, 1881.

CHAP. 51.

Wild Birds Protection Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Amendment of s. 3. of 43 & 44 Vict. c. 35.*
2. *Amendment of Schedule to 43 & 44 Vict. c. 35.*
3. *Short title and construction of Act.*

An Act to explain the Wild Birds Protection Act, 1880.

(22d August 1881.)

WHEREAS under section three of the Wild Birds Protection Act, 1880, a person who within the period therein mentioned exposes or offers for sale, or has in his control or possession any wild bird recently killed or taken is liable to certain penalties therein mentioned, subject to the following exception, "unless such person shall prove that the said wild bird was either killed or taken, or bought or received during the period in which such wild bird could be legally killed or taken, or from some person residing out of the United Kingdom";

And whereas doubts have arisen with respect to the construction of the above-recited enactment, and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The above-recited exception in section three of the Wild Birds Protection Act, 1880, shall be repealed, and in lieu thereof the following enactment shall have effect:

A person shall not be liable to be convicted under section three of the Wild Birds Protection Act, 1880, of exposing or offering for sale, or having the control or possession of, any wild bird recently killed, if he satisfies the court before whom he is charged either—

- (1.) That the killing of such wild bird, if in a place to which the said Act extends, was lawful at the time when and by the person by whom it was killed; or
- (2.) That the wild bird was killed in some place to which the said Act does not extend, and the fact that the wild bird was imported from some place to which the said Act does not extend shall, until the contrary is proved, be evidence that the bird was killed in some place to which the said Act does not extend.

2. The Schedule to the Wild Birds Protection Act, 1880, shall be read and construed as if the word "Lark" had been inserted therein.

3. This Act may be cited as the Wild Birds Protection Act, 1881.

This Act shall be construed as one with the Wild Birds Protection Act, 1880, and that Act and this Act may be cited together as the Wild Birds Protection Acts, 1880 and 1881.

CHAP. 52.

Royal University of Ireland Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Annual payment by the Commissioners of Church Temporalities in Ireland.*
2. *Audit of accounts of university.*
3. *Short title.*

An Act for providing Funds to defray certain of the Expenses of the Royal University of Ireland.

(22d August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. From and after the passing of this Act, the Commissioners of Church Temporalities in Ireland shall, out of the property accruing to them under the Irish Church Act, 1869, pay to the Royal University of Ireland the sums following; that is to say, they shall pay the sum of five thousand pounds within one month after the passing of this Act, and the sum of five thousand pounds on the first day of January one thousand eight hundred and eighty-two, and thereafter the annual sum of twenty thousand pounds, payable by two equal half-yearly instalments on the first day of July and first day of January in each year, the payment of the first of such half-yearly instalments to be made on the first day of July after the passing of this Act.

The sums so provided shall be applied by the Senate of the Royal University of Ireland for

the purposes of the university, in accordance with such statutes, rules, and ordinances as pursuant to any powers conferred by the University Education (Ireland) Act, 1879, and the Queen's Charter granted in pursuance thereof, and subject to any conditions by the same respectively imposed, may from time to time be made by the Senate and approved of by Her Majesty under Her Sign Manual.

2. The Senate shall from time to time prepare in such form and at such times as the Treasury from time to time direct accounts of the receipts and expenditure of the Royal University of Ireland, and within three months after the expiration of the year to which the accounts relate shall transmit the same to the Controller and Auditor General to be audited, certified, and reported upon in conformity with the powers and regulations prescribed in the Exchequer and Audit Departments Act, 1866, for rendering and auditing appropriation accounts, and the accounts, with the reports of the Controller and Auditor General thereon, shall be laid before the House of Commons not later than three months after the date on which they were transmitted for audit if Parliament be then sitting, and, if not sitting, within fourteen days after Parliament next assembles.

3. This Act may be cited as the Royal University of Ireland Act, 1881.

CHAP. 53.

East Indian Railway (Redemption of Annuities) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Power to purchase annuities from annuitants by means of India stock.*
2. *Power to create India stock for the purpose of reducing the public debt or liabilities of India.*
3. *Short title.*

An Act for making further provision with respect to the Redemption of the Annuity created under the East Indian Railway Company Purchase Act, 1879; and for other purposes.

(22d August 1881.)

WHEREAS by the East Indian Railway Company Purchase Act, 1879, (herein-after called the Purchase Act,) provision was made for transferring to and vesting in the Secretary of State in Council of India, herein-after called the Secretary of State, the undertaking of the

East Indian Railway Company, herein-after called the Company, and all other the property of the Company, save and except as therein mentioned, and for the creation of an annuity of one million four hundred and seventy-three thousand seven hundred and fifty pounds, terminating on the fourteenth of February one thousand nine hundred and fifty-three, to be charged on the revenues of India, and to be paid to the Company as therein mentioned for the purpose of being distributed among the proprietors of stock of the Company :

And whereas by section forty-six of the Purchase Act it was enacted that the Secretary of

State might purchase by agreement from any proprietor of stock of the Company the amount of annuity to which such proprietor was entitled, or any portion thereof, paying in exchange for the same as thereby provided, to any such proprietor on the register in London India Four per centum stock, and to any such proprietor on the register at Calcutta India Four per centum rupee debt in India, at the respective rates therein specified, subject to the proviso that no such purchase should be made by means of India Four per centum stock unless the Secretary of State should be authorised by Parliament to create and issue such stock for the purpose :

And whereas by the same Act (section forty-eight) provision was made for the registration in the name of the Secretary of State of the annuities so to be purchased, and (section forty-nine) for the retention by the Secretary of State of the amount therein mentioned in respect of the annuity registered in his name, and (section fifty) for the rights and liabilities of the Secretary of State in respect of the annuity so registered :

And whereas by section fifty-one of the same Act the Secretary of State was required to invest one equal ninth part of the amount retained by him in respect of the annuity registered in his name, in order to provide a sinking fund to be applied in the reduction of the public debt of India created under the authority of Parliament :

And whereas by an Act of the same Session, chapter forty-three, "to enable the Secretary of State in Council of India to create and issue capital stock in the United Kingdom in exchange for so much of the annuity created under the East Indian Railway Company Purchase Act, 1879, and thereby made chargeable on the revenues of India, as may be purchased by the Secretary of State under that Act" (herein-after called the Redemption Act), the Secretary of State was authorised to create and issue India four per centum stock for the purposes of the Purchase Act, and such stock has accordingly been created and issued, and paid in exchange for a portion of the annuity created under the Purchase Act :

And whereas by reason of the conversion of the stock of the Company into the annuities created under the Purchase Act there are no longer any proprietors of that stock, and it is expedient that the powers of the Secretary of State be extended to authorise the purchase of the said annuities from the holders thereof :

And whereas it is expedient that the Secretary of State be authorised to create and issue such capital stock, bearing interest at a lower rate than four per centum per annum, as may be

required either for the purpose of this purchase, or for the purpose of reducing the liabilities charged on the revenues of India by the redemption of any part of those liabilities which may for the time being bear interest at a rate not lower than the stock so created :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. (1.) The Secretary of State may purchase by agreement from any holder of the annuity created under the Purchase Act the whole or any part of the annuity held by him, paying in exchange for the same India stock created under this Act at such a rate of exchange that the annual interest on the stock given in exchange for any annuity shall not exceed eight ninths of the annuity.

(2.) The annuities purchased under this section shall be registered in the books of the Company in the name of the Secretary of State by his official style, and sections forty-nine and fifty of the Purchase Act shall apply to them as if they were so registered in pursuance of that Act.

2. (1.) The Secretary of State may from time to time create and issue so much capital stock, bearing interest at the rate of three and a half per centum per annum, or at any other rate not higher than four per centum per annum, as may be required either for the purpose of redeeming the annuities created under the Purchase Act by the purchase thereof under this Act, or for the purpose of redeeming any other liability now charged on the revenues of India and bearing interest or involving an annual payment at a rate not lower than the interest of the stock so created ; subject, nevertheless, to the following provisos :—

(a.) The difference between the interest or annual payment in respect of the liability redeemed and the interest on the stock created for redemption thereof shall be set aside and invested in manner directed by section fifty-one of the Purchase Act with respect to the amount of annuity retained by the Secretary of State under that Act, so as to provide a sinking fund to be applied in reduction of the public debt of India created under the authority of Parliament :

(b.) Any stock or securities that may be cancelled or redeemed for the purposes of such reduction shall not be re-issued without the authority of Parliament :

(c.) The amount so set aside shall be sufficient to repay the principal of the stock created at the expiration of the period during which the Secretary of State was liable to pay the interest or annual payment redeemed by means of the creation of the stock, if that period does not exceed ninety-nine years, but if it does exceed ninety-nine years then at the expiration of ninety-nine years from the date of the creation of the stock:

(d.) When and so soon as the public debt of India created under the authority of Parliament shall by the operation of the

said sinking fund be reduced by an amount equivalent to the amount of the public debt of India, attributable to the redemption effected under this section, any obligation imposed on the Secretary of State under or by virtue of this section shall cease and determine.

(2.) All the provisions of the Redemption Act with respect to the capital stock created or issued under that Act shall apply to the capital stock created or issued under this Act.

3. This Act may be cited as the East Indian Railway (Redemption of Annuities) Act, 1881.

CHAP. 54.

Indian Loan Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Repeal of 42 & 43 Vict. cc. 45 and 61, and provision as to conversion of annuities into terminable annuities.*
3. *Temporary increase of permanent annual charge of National Debt.*

An Act to make further provision with respect to the Indian Loan of 1879.

(22d August 1881.)

WHEREAS the Indian Advance Act, 1879, authorised the Commissioners of Her Majesty's Treasury (in this Act referred to as the Treasury) to advance to the Government of India two million pounds, and provided that such advance should be repaid by the Government of India as follows:

In the financial year 1880-81	290,000 <i>l.</i>
In each of the six succeeding financial years - - -	285,000 <i>l.</i>

inclusive of interest, at the rate of three per cent., and at such time or times as might be agreed on between the Treasury and the Government of India, but the Act provided that the interest so received should be repaid to the Government of India:

And whereas the said sum of two million pounds was advanced to the Government of India, but no sum has been repaid by the said Government in respect either of principal or interest:

And whereas in pursuance of the East Indian Loan (Annuities) Act, 1879, the above sum was raised by the creation of two million and forty-nine thousand two hundred and fifty-nine pounds five shillings and ninepence three per cent. consolidated bank annuities, and those

annuities are charged on the Consolidated Fund, but are not paid out of the permanent annual charge for the National Debt:

And whereas the said annuities were purchased by the Commissioners for the Reduction of the National Debt (in this Act referred to as the National Debt Commissioners) on account of trustee and post office savings banks:

And whereas it is expedient to repeal the said obligation on the Government of India to repay the said sum of two million pounds, and to provide for the conversion of the above-mentioned amount of three per cent. consolidated bank annuities into terminable annuities and for the payment of those annuities out of the permanent annual charge for the National Debt:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Indian Loan Act, 1881.

2. (1.) The Indian Advance Act, 1879, and the East Indian Loan (Annuities) Act, 1879, are hereby repealed without prejudice to anything done in pursuance of the said Acts before the passing of this Act.

(2.) The three per cent. consolidated bank annuities created in pursuance of the East Indian Loan (Annuities) Act, 1879, shall continue to be charged on the Consolidated Fund, and shall be paid out of the permanent annual charge of the National Debt.

(3.) The Treasury shall at any time or times before the thirty-first day of March one thousand eight hundred and eighty-two convert into terminable annuities for periods not exceeding twenty-five years such amounts of three per cent. consolidated bank annuities held by the National Debt Commissioners on account of trustee and post office savings banks, or either of them, as in the whole are equal to two million and forty-nine thousand two hundred and fifty-nine pounds five shillings and ninepence capital stock.

(4.) The Treasury may convert the same by a warrant to the Governor and Company of the Bank of England directing them to cancel the said annuities in their books as from the date of conversion specified in the warrant, and to inscribe in their books, as from the same date to the same account as that for which the cancelled annuities were held, terminable annuities of the amounts and for the periods mentioned in the warrant.

(5.) The amount of the terminable annuities to be inscribed shall be certified to the Treasury by the National Debt Commissioners under the hands of the Controller-General, or Assistant Controller, and of the Actuary of the National Debt Office.

(6.) For the purpose of ascertaining the amount of the terminable annuities—

interest shall be taken at the rate of interest yielded by three per cent. consolidated bank annuities at the average price of the day as certified by the Bank of England on the date of conversion.

the capital value of perpetual annuities shall be calculated at the average price of the same day.

(7.) The perpetual annuities directed in

pursuance of this Act to be cancelled shall after the date of conversion be cancelled, and all payments in respect thereof shall cease.

(8.) The terminable annuities created under this Act shall after the date of their creation be charged on the Consolidated Fund, and be paid out of the permanent annual charge of the National Debt yearly or half-yearly at such times in each year as may be fixed by the warrant creating them.

(9.) Every terminable annuity received by the National Debt Commissioners in pursuance of this Act shall, so far as it represents interest, be dealt with as dividends of the perpetual annuities converted into such terminable annuity would have been applied, and, so far as it represents principal, shall be dealt with by them as moneys received on account of trustee or post office savings banks, as the case may be.

(10.) The warrants of the Treasury issued in pursuance of this Act shall be a sufficient authority to the Bank of England for doing the things thereby directed, and copies of such warrants shall be laid before both Houses of Parliament within one month after they are issued, if Parliament is then sitting, and, if not, within one month after the then next meeting of Parliament.

3. For the period of four financial years commencing on the first day of April one thousand eight hundred and eighty-one, the permanent annual charge for the National Debt shall, subject to any increase under the Savings Bank Act, 1880, be twenty-eight million nine hundred and twenty thousand pounds, and thereafter during the currency of the terminable annuity created under this Act shall be twenty-eight million one hundred and twenty thousand pounds, and during the said periods the Sinking Fund Act, 1875, shall be construed as if the above-named sums were respectively substituted in the first section of that Act for "twenty-eight million pounds."

CHAP. 55.

National Debt Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Conversion of Exchequer bonds into permanent annuities with sinking fund.*
3. *Supplemental provisions as to creation of annuities.*
4. *Treasury warrants to be authority for Bank of England.*
5. *Declaration as to 43 & 44 Vict. c. 36. s. 1.*
6. *Definitions.*

An Act to make further provision respecting the National Debt and the Investment of Moneys in the hands of the National Debt Commissioners on account of Savings Banks and otherwise. (22d August 1881.)

WHEREAS it is expedient to make further provision respecting the securities held by the National Debt Commissioners :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the National Debt Act, 1881.

2. (1.) The Treasury may pay off any Exchequer bonds held at the passing of this Act by the National Debt Commissioners on account of Trustee and Post Office Savings Banks, not exceeding in the whole seven million seven hundred and fifty thousand pounds by the creation as from the day on which each such bond falls due, of perpetual annuities of equivalent capital value, and the day on which each such bond falls due shall be for the purposes of this Act the date of the creation of such annuities.

(2.) During twenty-five years from the date of the creation of any perpetual annuities in pursuance of this section there shall be charged on and paid out of the Consolidated Fund as a sinking fund for such perpetual annuities an annual sum for the first four years of one pound, and afterwards of three pounds four shillings and fourpence for every hundred pounds of the nominal capital amount of perpetual annuities created, and such sum shall be paid to the National Debt Commissioners and shall be applied by them as if it were part of the new sinking fund under the Sinking Fund Act, 1875.

(3.) The perpetual annuities created under this section shall be charged on the Consolidated Fund, but the said annuities during the twenty-five years above-mentioned, and the sinking fund under this section shall not be paid out of the permanent annual charge of the national debt.

(4.) This section shall apply to Exchequer bonds falling due in the month of August one thousand eight hundred and eighty-one, either before or after the passing of this Act.

3. For the purposes of this Act the following provisions shall have effect :

(1.) The annuities shall be created by a warrant from the Treasury to the Bank of England directing them to inscribe in their books, as from the date of creation specified in the warrant, perpetual annuities of the amount and description mentioned in the warrant.

(2.) The said amount shall be certified to the Treasury by the National Debt Commissioners under the hands of the Controller General or Assistant Controller and of the Actuary of the National Debt Office.

(3.) The equivalent capital value of perpetual annuities shall be calculated at the average price of the day as certified by the Bank of England on the date of creation, but if no price of stock is recorded on the date of creation, the price certified on the day nearest preceding shall be adopted.

(4.) The perpetual annuities created in pursuance of this Act shall be consolidated with other perpetual annuities of the same description and payable at the same date, and shall be transferable in the books of the Bank of England in like manner as the annuities with which they are consolidated, and shall be subject to the enactments relating to those annuities so far as is consistent with the tenour of those enactments; but nothing in this section shall make section sixty-nine of the National Debt Act, 1870, apply to any annuities created in pursuance of this Act.

4. The warrants of the Treasury issued in pursuance of this Act shall be a sufficient authority to the Bank of England for doing the things thereby directed, and copies of such warrants shall be laid before both Houses of Parliament within one month after they are issued if Parliament is then sitting, and if not, within one month after the then next meeting of Parliament.

5. Whereas in pursuance of the Savings Banks Act, 1880, a terminable annuity is directed to be inscribed in the books of the Bank of England for the National Debt Commissioners on account of trustee savings banks, for the purpose of paying off the deficiency therein mentioned, and doubts have arisen with respect to the interest on securities in which such annuity is to be invested, and it is expedient to remove such doubts: Be it therefore enacted that—

During the currency of the said annuity, the interest arising from any securities in which the money received in respect of the said annuity, or of any investment of the said annuity is invested, shall for the purpose of the annual account required to be made up by

the National Debt Commissioners of the interest arising from securities in their hands be treated as capital and not as interest.

6. In this Act, unless the context otherwise requires—

The expression "Treasury" means the Commissioners of Her Majesty's Treasury:

The expression "National Debt Commissioners" means the Commissioners for the Reduction of the National Debt:

The expression "Bank of England" means the Governor and Company of the Bank of England:

The expression "perpetual annuities" means three and a half per cent. bank annuities, three per cent. consolidated bank annuities, three per cent. reduced bank annuities, new three per cent. bank annuities, or two and a half per cent. bank annuities.

CHAP. 56.

Appropriation Act, 1881.

ABSTRACT OF THE ENACTMENTS.

Grant out of Consolidated Fund.

1. *Issue of 13,764,507l. out of the Consolidated Fund.*
2. *Power for the Treasury to borrow.*

Appropriation of Grants.

3. *Appropriation of sums voted for supply services.*
4. *Treasury may, in certain cases of exigency, authorise expenditure unprovided for; provided that the aggregate grants for the navy services and for the army services respectively be not exceeded.*
5. *Sanction for navy and army expenditure for 1879-80 unprovided for.*
6. *Declaration required in certain cases before receipt of sums appropriated.*
7. *Short title of Act.*

ABSTRACT OF SCHEDULES.

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two, and to appropriate the Supplies granted in this Session of Parliament. (27th August 1881.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Grant out of Consolidated Fund.

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of

the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two, the sum of thirteen million seven hundred and sixty-four thousand five hundred and seven pounds.

2. The Commissioners of Her Majesty's Treasury may borrow from time to time, on the credit of the said sum of thirteen million seven hundred and sixty-four thousand five hundred and seven pounds, any sum or sums of equal or less amount in the whole, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any moneys so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

Appropriation of Grants.

3. All sums granted by this Act and the other Acts mentioned in Schedule (A.) annexed to this Act out of the said Consolidated Fund towards making good the supply granted to Her Majesty, amounting, as appears by the said Schedule, in the aggregate, to the sum of fifty-eight million two hundred and ninety-one thousand four hundred and sixty-three pounds four shillings and twopence, are appropriated and shall be deemed to have been appropriated as from the date of the passing of the first of the Acts mentioned in the said Schedule (A.) for the purposes and services expressed in Schedule (B.) annexed hereto.

The abstract of schedules and schedules annexed hereto, with the notes (if any) to such schedules, shall be deemed to be part of this Act in the same manner as if they had been contained in the body thereof.

4. If a necessity arise for incurring expenditure not provided for in the sums appropriated to naval and military services by this Act, and which it may be detrimental to the public service to postpone until provision can be made for it by Parliament in the usual course, each of the departments entrusted with the control over the said services shall forthwith make application in writing to the Commissioners of Her Majesty's Treasury for their authority to defray temporarily such expenditure out of any surpluses which may have been or which may be effected by the saving of expenditure upon votes within the same department, and in such application the department shall represent to the Commissioners of the Treasury the circumstances which may render such additional expenditure necessary, and thereupon the said Commissioners may authorise the expenditure unprovided for as aforesaid to be temporarily defrayed out of any surpluses which may have been or which may be effected as aforesaid upon votes within the same department; and a statement showing all cases in which the naval and military departments have obtained the sanction of the said Commissioners to any expenditure not provided for in the respective votes aforesaid, accompanied by copies of the representations made to them by the said departments, shall be laid before the House of Commons with the appropriation accounts of navy and army services for the year, in order that such proceedings may be submitted for the sanction of Parliament, and that provision may be made for the deficiencies upon the several votes for the said services in such manner as Parliament may determine.

The Commissioners of the Treasury shall not authorise any expenditure which may cause an excess upon the aggregate sums appropriated by this Act for naval services and for army services respectively.

5. Whereas the Commissioners of the Treasury, under the powers vested in them by the Act of the session held in the forty-second and forty-third years of the reign of Her present Majesty, chapter fifty-one, have authorised expenditure not provided for in the sums appropriated by the said Act to certain votes for naval and military services for the year ended on the thirty-first day of March one thousand eight hundred and eighty, to be in part temporarily defrayed out of the balances unexpended in respect of the sums appropriated to certain other votes for naval and military services for the said year; viz.,

1st. Expenditure for certain navy services unprovided for, temporarily defrayed to the extent of two hundred and eight thousand six hundred and eighty-four pounds fourteen shillings and sixpence out of the unexpended balances of certain other votes for navy services.

2d. Expenditure for certain army services unprovided for, temporarily defrayed to the extent of four hundred and twenty-one thousand one hundred and forty-five pounds seven shillings and tenpence out of the unexpended balances of certain other votes for army services, and out of the sum realised in excess of the estimated appropriations in aid:

It is enacted, that the application of the said sums is hereby sanctioned.

6. A person shall not receive any part of a grant which may be made in pursuance of this Act for half pay, or army, navy, or civil non-effective services until he has subscribed such declaration as may from time to time be prescribed by a warrant of the Commissioners of Her Majesty's Treasury before one of the persons prescribed by such warrant.

Provided that, whenever any such payment is made at more frequent intervals than once in a quarter, the Commissioners of Her Majesty's Treasury may dispense with the production of more than one declaration in respect of each quarter.

Any person who makes a declaration for the purpose of this section, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor.

7. This Act may be cited for all purposes as the Appropriation Act, 1881.

ABSTRACT
OF
SCHEDULES (A.) and (B.) to which this Act refers.

SCHEDULE (A.)

Grants out of the Consolidated Fund	-	-	-	-	-	£	s.	d.
						58,291,463	4	2

SCHEDULE (B.)—APPROPRIATION OF GRANTS.

1880-81.						£	s.	d.
Part	1.	Deficiencies, 1879-80	-	-	-	12,109	4	2
"	2.	Supplementary, 1880-81	-	-	-	368,462	0	0
"	3.	Afghan War (Grant in Aid) 1880-81	-	-	-	500,000	0	0
"	4.	Army (Supplementary) 1880-81	-	-	-	446,000	0	0
"	5.	Navy (Supplementary) 1880-81	-	-	-	210,000	0	0
"	6.	Exchequer Bonds, 1880-81	-	-	-	2,500,000	0	0
1881-82.						£	s.	d.
"	7.	Navy	-	-	-	-	-	-
"	8.	Army	-	-	-	-	-	-
"	9.	Army (Indian Home Charges)	-	-	-	-	-	-
"	10.	Civil Services, Class I.	-	-	-	1,526,673		
"	11.	Ditto, Class II.	-	-	-	2,433,171		
"	12.	Ditto, Class III.	-	-	-	5,949,146		
"	13.	Ditto, Class IV.	-	-	-	4,461,456		
"	14.	Ditto, Class V.	-	-	-	636,257		
"	15.	Ditto, Class VI.	-	-	-	1,172,156		
"	16.	Ditto, Class VII.	-	-	-	45,510		
TOTAL CIVIL SERVICES						-	-	-
"	17.	Revenue departments, &c.	-	-	-	-	-	-
"	18.	Advances for Greenwich Hospital and School	-	-	-	-	-	-
"	19.	Expenses connected with the Transvaal	-	-	-	-	-	-
"	20.	Afghan War (Grant in Aid)	-	-	-	-	-	-
						4,036,571	4	2
						10,895,919	0	0
						16,589,500	0	0
						1,100,000	0	0
						16,224,369	0	0
						8,392,581	0	0
						152,523	0	0
						400,000	0	0
						500,000	0	0
						£58,291,463	4	0

SCHEDULE (A.)—GRANTS OUT OF THE CONSOLIDATED FUND.

For the service of the years ending 31st March 1880 and 1881; viz. :—

	Under Act 44 Vict. cap. 1.	-	-	-	-	£	s.	d.
	Under Act 44 Vict. cap. 8.	-	-	-	-	2,500,000	0	0
		-	-	-	-	1,536,571	4	2
For the service of the year ending 31st March 1882 :—								
	Under Act 44 Vict. c. 8.	-	-	-	-	11,819,046	0	0
	Under Act 44 & 45 Vict. c. 15.	-	-	-	-	6,975,627	0	0
	Under Act 44 & 45 Vict. c. 50.	-	-	-	-	21,695,712	0	0
	Under this Act	-	-	-	-	13,764,507	0	0
TOTAL						-	-	-
						58,291,463	4	2

SCHEDULE (B.)—PART 1.

DEFICIENCIES.

SCHEDULE of SUMS granted to make good deficiencies on the several grants herein particularly mentioned for the year ended on the 31st day of March 1880; viz. :—

CIVIL SERVICES.							
CLASS II.							
The Mint, including Coinage	-	-	-	-	-	-	£ s. d.
Lunacy Commission, Scotland	-	-	-	-	-	-	64 2 2
							44 10 7
CLASS III.							
County Courts	-	-	-	-	-	-	2,124 17 11
Land Registry	-	-	-	-	-	-	12 19 7
Convict Establishments in England and the Colonies	-	-	-	-	-	-	2,205 8 6
CLASS IV.							
Endowed Schools Commissioners, Ireland	-	-	-	-	-	-	167 12 6
Queen's Colleges, Ireland	-	-	-	-	-	-	517 0 10
CLASS V.							
Consular Services	-	-	-	-	-	-	5,421 12 6
Suppression of the Slave Trade	-	-	-	-	-	-	1,550 19 7
TOTAL							12,109 4 2

SCHEDULE (B.)—PART 2.

SUPPLEMENTARY.

SCHEDULE of SUPPLEMENTARY SUMS granted to defray the charges for the Services herein particularly mentioned for the year ended on the 31st day of March 1881; viz. :—

CLASS I.					£
Public Buildings, Great Britain	-	-	-	-	2,192
Surveys of the United Kingdom	-	-	-	-	3,000
Science and Art Department Buildings	-	-	-	-	5,087
British Museum Buildings	-	-	-	-	800
Diplomatic and Consular Buildings	-	-	-	-	1,838
CLASS II.					
Treasury	-	-	-	-	260
Foreign Office	-	-	-	-	14,000
Colonial Office	-	-	-	-	1,550
Board of Trade	-	-	-	-	5,500
Civil Service Commission	-	-	-	-	1,800
Friendly Societies Registry	-	-	-	-	250
Local Government Board	-	-	-	-	4,976
The Mint, including Coinage	-	-	-	-	5,000
Stationery and Printing	-	-	-	-	39,750
<i>Ireland :</i>					
Chief Secretary's Office	-	-	-	-	750
Local Government Board	-	-	-	-	6,883
Public Works Office	-	-	-	-	1,800

CLASS III.						£
Law Charges, England	-	-	-	-	-	30,100
Chancery Division, High Court of Justice	-	-	-	-	-	1,230
Central Office of the Supreme Court of Judicature	-	-	-	-	-	26,755
Wreck Commission	-	-	-	-	-	650
Police Courts, London and Sheerness	-	-	-	-	-	160
Police, Counties and Boroughs, Great Britain	-	-	-	-	-	3,010
Prisons, England	-	-	-	-	-	14,624
Reformatory and Industrial Schools, Great Britain	-	-	-	-	-	5,500
<i>Ireland:</i>						
Law Charges and Criminal Prosecutions	-	-	-	-	-	6,600
Queen's Bench, &c., Divisions	-	-	-	-	-	3,500
Land Judges' Offices	-	-	-	-	-	1,103
Bankruptcy Court	-	-	-	-	-	50
County Court Officers, &c.	-	-	-	-	-	2,500
Constabulary	-	-	-	-	-	28,900
CLASS IV.						
National Gallery	-	-	-	-	-	652
Learned Societies, &c.	-	-	-	-	-	500
London University	-	-	-	-	-	256
<i>Scotland:</i>						
Universities, &c.	-	-	-	-	-	54
<i>Ireland:</i>						
Endowed Schools Commissioners	-	-	-	-	-	41
CLASS V.						
Diplomatic Services	-	-	-	-	-	21,730
Consular Services	-	-	-	-	-	4,365
Grants in Aid of certain Colonies	-	-	-	-	-	12,188
Tonnage Bounties, &c.	-	-	-	-	-	7,800
Subsidies to Telegraph Companies	-	-	-	-	-	6,369
Treasury Chest	-	-	-	-	-	2,764
CLASS VI.						
Superannuations and Retired Allowances	-	-	-	-	-	11,000
CLASS VII.						
Temporary Commissions	-	-	-	-	-	1,100
Miscellaneous Expenses	-	-	-	-	-	350
Repayments to the Civil Contingencies Fund	-	-	-	-	-	5,585
REVENUE DEPARTMENTS.						
Customs	-	-	-	-	-	12,000
Post Office	-	-	-	-	-	18,200
Post Office Packet Service	-	-	-	-	-	9,000
Post Office Telegraphs	-	-	-	-	-	34,390
Total	-	-	-	-	-	368,462

SCHEDULE (B.)—PART 3.

AFGHAN WAR (GRANT IN AID).

For paying an instalment of a grant in aid of the expenditure incurred by the Government of India upon the War in Afghanistan, in the years 1878-80, which became due and payable during the year ended on the 31st day of March 1881	£
	500,000

SCHEDULE (B.)—PART 4.

ARMY (SUPPLEMENTARY, 1880-81).

For defraying the charge which may be incurred during the year ended on the 31st day of March 1881 beyond the original grants of Parliament, for meeting additional expenditure for Supplies and Warlike Stores for the Army, viz.:	£
Vote 9. For commissariat and ordnance store establishments, wages, &c.	41,000
Vote 10. For provisions, forage, fuel, transport and other services	320,000
Vote 11. For clothing establishments, services and supplies	25,000
Vote 12. For the supply, manufacture, and repair of warlike and other stores, including establishments of manufacturing departments	60,000
	446,000

SCHEDULE (B.)—PART 5.

NAVY (SUPPLEMENTARY, 1880-81).

For defraying the expenses which may be incurred during the year ended on the 31st day of March 1881, beyond the original grants of Parliament, for Extraordinary Transport Services in connexion with the outbreak of hostilities in the Transvaal, viz.:	£
Vote 17. For freight of ships, for the victualling and conveyance of troops, on account of the Army Department	210,000

SCHEDULE (B.)—PART 6.

EXCHEQUER BONDS.

To pay off and discharge Exchequer Bonds which became due and payable during the year ended on the 31st day of March 1881	£
	2,500,000

SCHEDULE (B.)—PART 7.

NAVY.

SCHEDULE of SUMS granted to defray the charges of the NAVY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st of March 1882; viz. :—

No.	Sums not exceeding
	£
1. For wages, &c. to 58,100 seamen and marines	2,704,226
2. For victuals and clothing for seamen and marines	1,014,481
3. For the expenses of the Admiralty Office	180,583

No.		Sums not exceeding
		£
4.	For the expense of the coast guard service, the royal naval reserve, and seamen and marine pensioners reserve, and royal naval artillery volunteers	194,481
5.	For the expense of the several scientific departments of the navy	120,382
6.	For the expense of the dockyards and naval yards at home and abroad	1,446,346
7.	For the expense of the victualling yards at home and abroad	71,917
8.	For the expense of the medical establishments at home and abroad	65,969
9.	For the expense of the Marine Divisions	22,138
10.	Sect. 1. For naval stores for building, repairing, and outfitting the fleet and coast guard	1,172,700
	„ Sect. 2. For steam machinery, and ships built by contract, &c.	683,239
11.	For new works, buildings, machinery, and repairs in the naval establishments	550,141
12.	For medicines, medical stores, &c.	70,460
13.	For martial law, &c.	10,069
14.	For the expense of various miscellaneous services	127,421
15.	For half pay, reserved half pay, and retired pay to officers of the navy and marines	877,890
16.	Sect. 1. For military pensions and allowances	847,035
	„ Sect. 2. For civil pensions and allowances	337,991
17.	For freight of ships, for the victualling and conveyance of troops, on account of the army department (including a supplementary sum of 170,000 <i>l.</i> to defray the charge for extraordinary transport services in connexion with the outbreak of hostilities in the Transvaal)	398,450
TOTAL NAVY SERVICES - . £		10,895,919

SCHEDULE (B.)—PART 8.

ARMY.

SCHEDULE of SUMS granted to defray the charges of the ARMY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1882; viz.:—

No.		Sums not exceeding
		£
1.	For the general staff and regimental pay, allowances, and charges of Her Majesty's land forces at home and abroad, exclusive of charges on India (including a supplementary sum of 30,000 <i>l.</i>)	4,466,000
2.	For divine service	52,400
3.	For administration of military law	39,800
4.	For medical establishments and services	300,500
5.	For the pay and allowances of a force of militia, not exceeding 134,394 men, including 28,000 militia reserve	476,900
6.	For the yeomanry cavalry pay and allowances	73,900
7.	For the volunteer corps pay and allowances	540,500
8.	For the pay and allowances of a number of army reserve first class, not exceeding 24,000, and of the army reserve second class	218,800
9.	For commissariat and ordnance store establishments, wages, &c. (including a supplementary sum of 40,000 <i>l.</i>)	444,800
10.	For provisions, forage, fuel, transport and other services (including a supplementary sum of 290,000 <i>l.</i>)	3,701,000

		Sums not exceeding
No.		£
11.	For clothing establishments, services, and supplies - - - -	780,000
12.	For the supply, manufacture, and repair of warlike and other stores, including establishments of manufacturing departments (including a supplementary sum of 120,000 <i>l.</i>) - - - -	1,290,000
13.	For superintending establishment of, and expenditure for, works, buildings, and repairs at home and abroad - - - -	758,900
14.	For establishments for military education - - - -	164,100
15.	For miscellaneous effective services - - - -	40,100
16.	For the administration of the army - - - -	222,200
17.	For rewards for distinguished services, &c., exclusive of charges on India - - - -	34,000
18.	For unattached pay, &c. of general officers, and the half-pay of regimental and departmental officers, exclusive of charges on India - - - -	129,700
19.	For retired full pay, retired pay, pensions, and gratuities, for reduced and retired officers, including payments allowed by Army Purchase Commissioners, exclusive of charges on India - - - -	1,054,700
20.	For widows pensions and gratuities, for allowances on the compassionate list, and for the relief fund, &c., exclusive of charges on India - - - -	124,200
21.	For pensions for wounds - - - -	17,000
22.	For Chelsea and Kilmainham hospitals, and the in-pensioners thereof - - - -	33,900
23.	For the out-pensioners of Chelsea Hospital, &c., exclusive of charges on India - - - -	1,386,500
24.	For superannuation allowances - - - -	202,200
25.	For the non-effective services of the militia, yeomanry cavalry, and volunteer corps - - - -	37,400
TOTAL ARMY SERVICES - - - -		£ 16,589,500

SCHEDULE (B.)—PART 9.

ARMY (INDIAN HOME CHARGES).

For the sum to be transferred in aid of Army Grants to meet the charge incurred in recruiting and training officers and men, and in defraying the non-effective expenditure for the regular forces serving in India, which will come in course of payment during the year ending on the 31st day of March 1882 - - - -	£ 1,100,000
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SCHEDULE (B.)—PART 10.

CIVIL SERVICES.—CLASS I.

SCHEDULE of Sums granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1882; viz. :—

		Sums not exceeding
No.		£
1.	For the maintenance and repair of the royal palaces - - - -	42,739
2.	For the maintenance and repair of Marlborough House - - - -	2,397
3.	For the royal parks and pleasure gardens - - - -	110,926

No.	Sums not exceeding
4. For the buildings of the Houses of Parliament (including a supplementary sum of 2,900 <i>l.</i>) - - - - -	£ 36,160
4A. For the execution and erection of a statue in the Collegiate Church of St. Peter, Westminster, to the memory of the late Right Honourable Benjamin Disraeli, Earl of Beaconsfield, K.G., P.C. - - - - -	2,100
5. For the maintenance and repair of public buildings in Great Britain and the Isle of Man (including various special works); for providing the necessary supply of water; for rents of houses hired for accommodation of public departments, and charges attendant thereon, &c. (including a supplementary sum of 5,000 <i>l.</i>) - - - - -	130,428
6. For the supply and repair of furniture in the public departments of Great Britain - - - - -	15,980
7. For the expenses of the Customs, Inland Revenue, Post Office, and Post Office Telegraph Buildings, in Great Britain, including furniture, fuel, and sundry miscellaneous services - - - - -	228,515
8. For new buildings for county courts, maintenance and repair of courts, supply of furniture, fuel, &c., and other charges attendant thereon - - - - -	55,496
9. For charges connected with Metropolitan Police Court Buildings - - - - -	10,013
10. For one half of the expense of erecting or improving court houses or offices for the sheriff courts in Scotland, and the expense of maintaining the courts erected or improved - - - - -	7,195
11. For the purchase of a site, erection of building, and other expenses for the new courts of justice and offices belonging thereto - - - - -	120,200
12. For the survey of the United Kingdom, including the revision of the survey of Ireland, maps for use in proceedings before the Land Judges in Ireland, publication of maps, and engraving the geological survey - - - - -	185,000
13. For erecting and maintaining new buildings, including rents, &c., for the Department of Science and Art - - - - -	22,141
14. For the maintenance and repair of the British Museum and Natural History Museum buildings, for rents of premises, supply of water, fuel, &c., and charges attendant thereon - - - - -	6,523
15. For the erection of a Natural History Museum, including fittings, &c. - - - - -	45,858
16. For a grant in aid of the new buildings for the University of Edinburgh - - - - -	20,000
17. For maintaining certain harbours, &c. under the Board of Trade - - - - -	10,609
17A. For a grant in aid for executing the necessary repairs of the Caledonian Canal, and for meeting the outstanding liabilities of the Commissioners of the Canal appointed under 11 & 12 Vict. c. 54. - - - - -	10,000
18. For rates and contributions in lieu of rates in respect of Government property, and for salaries and expenses of the rating of Government property department - - - - -	195,633
19. For contribution to the funds for the establishment and maintenance of a fire brigade in the metropolis - - - - -	10,000
20. For erection, repairs, and maintenance of the several public works and buildings under the department of the Commissioners of Public Works in Ireland, and for the erection of fishery piers, and the maintenance of certain parks, harbours, and navigations - - - - -	193,926
21. For expenses preparatory to, and of the erection of the Museum of Science and Art in Dublin, and of additions to the School of Art in Dublin - - - - -	10,000
22. For works to regulate the flood waters of the River Shannon - - - - -	21,700
23. For erecting and maintaining certain lighthouses abroad - - - - -	10,650
24. For diplomatic and consular buildings, including rents and furniture, and for the maintenance of certain cemeteries abroad - - - - -	22,484
TOTAL CIVIL SERVICES, CLASS I. - - - - -	£ 1,526,673

SCHEDULE (B).—PART 11.

CIVIL SERVICES.—CLASS II.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1882; viz.:—

No.	Sums not exceeding
	£
1. For salaries and expenses in the offices of the House of Lords - -	43,182
2. For salaries and expenses in the offices of the House of Commons - -	50,644
3. For salaries and expenses of the department of Her Majesty's Treasury and in the office of the Parliamentary Counsel - -	57,732
4. For salaries and expenses of the office of Her Majesty's Secretary of State for the Home Department and subordinate offices - -	91,278
5. For salaries and expenses of the department of Her Majesty's Secretary of State for Foreign Affairs - -	72,068
6. For salaries and expenses of the department of Her Majesty's Secretary of State for the Colonies, including certain expenses connected with Emigration - -	38,792
7. For salaries and expenses of the department of Her Majesty's Most Honourable Privy Council and subordinate departments - -	30,077
8. For salaries and expenses of the office of the Lord Privy Seal - -	2,855
9. For salaries and expenses of the office of the Committee of Privy Council for Trade, and subordinate departments - -	171,933
10. For salaries and expenses of the Charity Commission for England and Wales - -	32,619
11. For salaries and expenses of the Civil Service Commission - -	28,798
12. For salaries and expenses of the office of the Copyhold, Inclosure, and Tithe Commission - -	16,966
13. For imprest expenses under the Inclosure and Drainage Acts - -	7,925
14. For salaries and expenses of the department of the Comptroller and Auditor General, including the Chancery Audit Branch - -	56,233
15. For salaries and expenses of the Registry of Friendly Societies - -	6,286
16. For salaries and expenses of the Local Government Board, including various grants in aid of local taxation - -	415,173
17. For salaries and expenses of the office of the Commissioners in Lunacy in England - -	15,195
18. For salaries and expenses of the Mint, including the expenses of the coinage (including a supplementary sum of 25,500 <i>l.</i>) - -	88,140
19. For salaries and expenses of the National Debt Office - -	17,142
20. For charges connected with the Patent Law Amendment Act, the Registration of Trade Marks Act, and the Registration of Designs Act - -	29,438
21. For salaries and expenses of the department of Her Majesty's Paymaster General in London and Dublin - -	25,277
22. For salaries and expenses of the establishments under the Public Works Loan Commissioners - -	9,943
23. For salaries and expenses of the Public Record Office in England - -	21,567
24. For salaries and expenses of the department of the Registrar General of Births, &c. in England, including taking the Census of England - -	147,943
25. For stationery, printing, and paper, binding, and printed books, for the several departments of Government in England, Scotland, and Ireland, and some dependencies, and for the two Houses of Parliament; for the salaries and expenses of the Establishment of the Stationery Office, and the cost of Stationery Office publications, and of the Gazette Offices; and for sundry miscellaneous services, including a grant in aid of the publication of Parliamentary Debates - -	500,000

No.		Sums not exceeding
26.	For salaries and expenses of the office of Woods, Forests, and Land Revenues, and of the office of Land Revenue Records and Inrolments -	£ 23,196
27.	For salaries and expenses of the office of the Commissioners of Her Majesty's Works and Public Buildings -	45,765
28.	For Her Majesty's foreign and other secret services -	23,000
29.	For salaries and expenses of the department of the Queen's and Lord Treasurer's Remembrancer in Exchequer, Scotland, of certain officers in Scotland, and other charges formerly on the hereditary revenue -	6,527
30.	For salaries and expenses of the Fishery Board in Scotland, and for grants in aid of piers or quays -	13,239
31.	For salaries and expenses of the Board of Lunacy in Scotland -	5,944
32.	For salaries and expenses of the department of the Registrar General of Births, &c. in Scotland, including taking the Census of Scotland -	32,746
33.	For salaries and expenses of the Board of Supervision for Relief of the Poor, and for expenses under the Public Health and Vaccination Acts, including certain grants in aid of local taxation in Scotland -	18,582
34.	For salaries of the officers and attendants of the household of the Lord Lieutenant of Ireland and other expenses -	7,270
35.	For salaries and expenses of the offices of the Chief Secretary to the Lord Lieutenant of Ireland, in Dublin and London, and subordinate departments -	38,253
36.	For salaries and expenses of the office of the Commissioners of Charitable Donations and Bequests for Ireland -	2,086
37.	For salaries and expenses of the Local Government Board in Ireland, including various grants in aid of local taxation -	134,629
38.	For salaries and expenses of the Office of Public Works in Ireland -	41,595
39.	For salaries and expenses of the Public Record Office, and of the Keeper of the State Papers in Ireland -	6,135
40.	For salaries and expenses of the department of the Registrar General of Births, &c., and for expenses of the collection of agricultural and emigration statistics in Ireland, and of taking the Census of Ireland -	33,050
41.	For salaries and expenses of the general valuation and boundary survey of Ireland -	23,948
TOTAL CIVIL SERVICES, CLASS II.		£ 2,433,171

SCHEDULE (B.)—PART 12.

CIVIL SERVICES.—CLASS III.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1882; viz.:—

No.		Sums not exceeding
1.	For the salaries of the law officers, the salaries and expenses of the department of the Solicitor for the affairs of Her Majesty's Treasury, and of the department of the Queen's Proctor for divorce interventions, the costs of prosecutions, including those relating to the coin and to bankruptcy, and of other legal proceedings conducted by those departments, and various other legal expenses, including Statute Law Revision and Parliamentary Agency -	£ 73,281

No.	Sums not exceeding
2. For the salaries and expenses of the office of the Director of Public Prosecutions - - - - -	£ 3,821
3. For criminal prosecutions at assizes and quarter sessions in England, including adjudications under the Criminal Justice and the Juvenile Offenders Acts, sheriffs expenses, salaries to clerks of assize and other officers, and for compensation to clerks of the peace and others, and for expenses incurred under Extradition Treaties - - - - -	196,022
4. For such of the salaries and expenses of the Chancery Division of the High Court of Justice, of the Court of Appeal, and of the Supreme Court of Judicature, exclusive of the Central Office, as are not charged on the Consolidated Fund - - - - -	162,115
5. For the salaries and expenses of the Central Office of the Supreme Court of Judicature, the salaries and expenses of the Judges' Clerks and other officers, of the District Registrars of the High Court, the remuneration of the Judges' Marshals, and certain circuit and other expenses - - - - -	118,427
6. For salaries and expenses of the Registries of Probate and Divorce and Matrimonial Causes, &c., in the Probate, Divorce, and Admiralty Division of the High Court of Justice - - - - -	93,124
7. For salaries and expenses of the offices of the Admiralty Registrar and Marshal of the Probate, Divorce, and Admiralty Division of the High Court of Justice - - - - -	11,297
8. For salaries and expenses of the office of the Wreck Commissioner - - - - -	13,618
9. For such of the salaries and expenses of the London Bankruptcy Court as are not charged on the Consolidated Fund - - - - -	36,424
10. For salaries and expenses connected with the County Courts - - - - -	462,936
11. For salaries and expenses of the Office of Land Registry - - - - -	5,442
12. For the expense of revising barristers in England - - - - -	18,690
13. For salaries and expenses of the police courts of London and Sheerness - - - - -	15,021
14. For contribution toward the expenses of the metropolitan police, and of the horse patrol, and Thames police, and for the salaries of the Commissioner, Assistant Commissioners, and Receiver - - - - -	460,402
15. For certain expenses connected with the police in counties and boroughs in England and Wales, and with the police in Scotland - - - - -	915,298
16. For the superintendence of convict establishments and for the maintenance of convicts in convict establishments in England and the Colonies - - - - -	435,844
17. For the salaries and expenses of the Commissioners and other officers appointed under the 6th and 7th sections of the Prison Act, 1877, and the expenses of the several prisons in England and Wales to which that Act applies - - - - -	463,759
18. For the maintenance of juvenile offenders in reformatory, industrial, and day industrial schools in Great Britain, and for the salaries and expenses of the Inspectors of Reformatories - - - - -	272,626
19. For the maintenance of criminal lunatics in Broadmoor Criminal Lunatic Asylum, England, and of one criminal lunatic in Bethlem Hospital - - - - -	26,019
20. For salaries and expenses of the Lord Advocate's department and others connected with criminal proceedings in Scotland, including certain allowances under the Act 15 & 16 Vict. c. 83. - - - - -	65,700
21. For salaries and expenses of the Courts of Law and Justice in Scotland and other legal charges - - - - -	59,008
22. For salaries and expenses of the offices in Her Majesty's General Register House, Edinburgh - - - - -	37,422
23. For the expenses of the Prison Commissioners for Scotland, and of the prisons under their control, including the maintenance of criminal lunatics and the preparation of judicial statistics - - - - -	127,340
24. For the expense of criminal prosecutions and other law charges in Ireland, including certain allowances under the Act 15 & 16 Vict. c. 83. - - - - -	86,446
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No.		Sums not exceeding
25.	For such of the salaries and expenses of the Supreme Court of Judicature in Ireland as are not charged on the Consolidated Fund -	£ 89,898
26.	For salaries and incidental expenses of the Court of Bankruptcy in Ireland -	10,333
27.	For salaries and expenses of the Admiralty Court Registry in Ireland -	1,400
28.	For salaries and expenses of the Office for the Registration of Deeds in Ireland -	19,217
29.	For salaries and expenses in the Office for the Registration of Judgments in Ireland -	2,917
30.	For the salaries, allowances, and expenses of various county court officers, and of magistrates in Ireland, and of the revising barristers of the city of Dublin -	86,730
31.	For salaries and expenses of the Commissioners of Police, of the police courts and of the metropolitan police establishment of Dublin -	134,586
32.	For the expenses of the Constabulary Force in Ireland -	1,192,975
33.	For the expense of the superintendence of prisons, and of the maintenance of prisoners in prisons in Ireland, and of the registration of habitual criminals -	146,612
34.	For the expenses of reformatories and industrial schools in Ireland -	97,548
35.	For the maintenance of criminal lunatics in Dundrum Criminal Lunatic Asylum, Ireland -	6,848
TOTAL CIVIL SERVICES, CLASS III. -		£ 5,949,146

SCHEDULE (B).—PART 13.

CIVIL SERVICES.—CLASS IV.

SCHEDULE of Sums granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1882; viz. :—

No.		Sums not exceeding
1.	For public education in England and Wales, including the expenses of the Education Office in London -	£ 2,683,958
2.	For salaries and expenses of the Department of Science and Art, and of the establishments connected therewith -	337,181
3.	For salaries and expenses of the British Museum, including the amount required for the Natural History Museum (and including a supplementary sum of 3,000 <i>l.</i>) -	132,939
4.	For salaries and expenses of the National Gallery -	17,273
5.	For salaries and expenses of the National Portrait Gallery -	2,479
6.	For grants in aid of the expenditure of certain learned societies in Great Britain and Ireland -	17,600
7.	For salaries and expenses of the University of London -	11,601
8.	For preparing an account of the scientific results of the expedition of Her Majesty's ship "Challenger" in 1873, 1874, 1875, and 1876, to investigate the physical and biological conditions of the great ocean basins, and of arranging the collections made during the expedition -	4,500
9.	For the salaries and expenses of the Royal Commission appointed in connection with the International Exhibitions at Sydney and Melbourne -	4,937
10.	For public education in Scotland -	468,435
11.	For grants to Scottish Universities -	18,992

No.	Sums not exceeding
12. For the annuity to the Board of Trustees of manufactures in Scotland, in discharge of equivalents under the Treaty of Union, to be applied in maintenance of the National Gallery, School of Art and Museum of Antiquities, Scotland, and for the exhibition of the Torrie Collection of Works of Art, and for other purposes - - - - -	£ 2,100
13. For public education under the Commissioners of National Education in Ireland - - - - -	729,868
14. For the salaries and expenses of the National School Teachers' Superannuation Office, Dublin - - - - -	1,726
15. For the salary and expenses of the Office of the Commissioners of Education in Ireland appointed for the regulation of endowed schools - - - - -	725
16. For salaries and expenses of the National Gallery of Ireland, and for the purchase of pictures - - - - -	2,339
17. For expenses of the Queen's University in Ireland - - - - -	5,199
18. For the expenses of the Royal University of Ireland - - - - -	2,176
19. In aid of the expenses of the Queen's Colleges in Ireland - - - - -	15,428
20. In aid of the expenses of the Royal Irish Academy, &c. - - - - -	2,000
TOTAL CIVIL SERVICES, CLASS IV. - - - - -	£ 4,461,456

SCHEDULE (B.)—PART 14.

CIVIL SERVICES.—CLASS V.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1882; viz. :—

No.	Sums not exceeding
1. For expenses of Her Majesty's embassies and missions abroad (including a supplementary sum of 4,500 <i>l.</i>) - - - - -	£ 208,070
2. For consular establishments abroad, and for other expenditure chargeable on the Consular Vote - - - - -	252,387
3. For expenses of the mixed commissions established under the treaties with foreign powers for suppressing the traffic in slaves, and of other establishments in connection with that object, including the Muscat subsidy - - - - -	6,097
4. For tonnage bounties, bounties on slaves, costs of captors, &c., and expenses of the Liberated African Department - - - - -	11,047
5. For salaries and expenses of the three representatives of Her Majesty's Government on the Council of Administration of the Suez Canal Company - - - - -	1,670
6. In aid of colonial local revenue, and for the salaries and allowances of governors, &c., and for other charges connected with the colonies, including expenses incurred under the Pacific Islanders Protection Act 1875 (including a supplementary sum of 5,730 <i>l.</i>) - - - - -	41,481
7. For certain non-effective charges connected with the Orange River Territory and the island of St. Helena - - - - -	2,205
8. For subsidies to telegraph companies and for the salary of the Official Director - - - - -	35,300
9. For a grant in aid of the revenue of the Island of Cyprus - - - - -	78,000
TOTAL CIVIL SERVICES, CLASS V. - - - - -	£ 636,257

SCHEDULE (B.)—PART 15.

CIVIL SERVICES.—CLASS VI.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1882; viz. :—

No.			Sums not exceeding
			£
1.	For superannuation and retired allowances to persons formerly employed in the public service, and for compassionate or other special allowances and gratuities awarded by the Commissioners of Her Majesty's Treasury	- - - - -	449,980
2.	For pensions to masters and seamen of the merchant service, and to their widows and children	- - - - -	26,550
3.	For the relief of distressed British seamen abroad	- - - - -	31,900
4.	In aid of the local cost of maintenance of pauper lunatics in England and Wales	- - - - -	425,000
5.	In aid of the local cost of maintenance of pauper lunatics in Scotland	- - - - -	76,588
6.	In aid of the local cost of maintenance of pauper lunatics in Ireland	- - - - -	87,922
7.	For the support of certain hospitals and infirmaries in Ireland	- - - - -	17,058
8.	For making good the deficiency arising from payments for interest to friendly societies	- - - - -	49,852
9.	For miscellaneous, charitable, and other allowances in Great Britain	- - - - -	3,321
10.	For certain miscellaneous, charitable, and other allowances in Ireland	- - - - -	3,985
TOTAL CIVIL SERVICES, CLASS VI.			£ 1,172,156

SCHEDULE (B.)—PART 16.

CIVIL SERVICES.—CLASS VII.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1882; viz. :—

No.			Sums not exceeding
			£
1.	For salaries and incidental expenses of temporary commissions and committees, including special inquiries	- - - - -	39,383
2.	For certain miscellaneous expenses	- - - - -	6,127
TOTAL CIVIL SERVICES, CLASS VII.			£ 45,510

SCHEDULE (B.)—PART 17.

REVENUE DEPARTMENTS, &c.

SCHEDULE of SUMS granted to defray the charges of the several REVENUE DEPARTMENTS, &c., herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1882; viz.:—

				Sums not exceeding
No.				£
1.	For salaries and expenses of the Customs Department	-	-	977,737
2.	For salaries and expenses of the Inland Revenue Department	-	-	1,873,471
3.	For salaries and expenses of the Post Office services, the expenses of Post Office savings banks, and Government annuities and insurances, and the collection of the Post Office revenue	-	-	3,539,525
4.	For the Post Office packet service	-	-	707,767
5.	For salaries and expenses of the Post Office telegraph service	-	-	1,294,081
TOTAL REVENUE DEPARTMENTS				£ 8,392,581

SCHEDULE (B.)—PART 18.

GREENWICH HOSPITAL AND SCHOOL.

Advances during the year ending on the 31st day of March 1882 for defraying the expenses of Greenwich Hospital and School	£ 152,523
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SCHEDULE (B.)—PART 19.

TRANSVAAL.

For defraying expenses connected with the Transvaal during the year ending on the 31st day of March 1882	£ 400,000
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SCHEDULE (B.)—PART 20.

AFGHAN WAR (GRANT IN AID).

For paying an instalment of a grant in aid of the expenditure incurred by the Government of India upon the war in Afghanistan, in the years 1878-80, which will become due and payable during the year ending on the 31st day of March 1882	£ 500,000
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CHAP. 57.

Regulation of the Forces Act, 1881.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short title.*
2. *Definitions.*

PART I.

AUXILIARY FORCES AND RESERVES.

Regular and Auxiliary Forces.

3. *Removal of doubts as to military command.*
4. *Regulations respecting government and organisation of militia.*
5. *Punishment of militiamen for desertion and absence without leave.*
6. *Punishment of fraudulent enlistment of militiaman.*
7. *Application to militia of 42 & 43 Vict. c. 33. ss. 32 and 34, as to enlistment of men discharged with disgrace.*
8. *Supplemental provisions as to offences by militiaman.*

Volunteers.

9. *Removal of doubts as to consolidation of corps under 26 & 27 Vict. c. 65.*

Reserves.

10. *Provision for Supplemental Reserve.*
11. *Re-engagement of men in militia reserve.*
12. *Amendment as to service of reserve forces.*
13. *Removal of doubts as to pensions of army reserve men.*

PART II.

AMENDMENTS OF THE ARMY DISCIPLINE AND REGULATION ACT, 1879.

Preliminary.

14. *Construction and duration of part of Act.*

AMENDMENTS OF PART I. (DISCIPLINE).

CRIMES AND PUNISHMENTS.

Desertion, fraudulent Enlistment, and Absence without Leave.

15. *Amendment of ss. 12 & 13 as to desertion and fraudulent enlistment.*

Offences in relation to Prisoner.

16. *Amendment of s. 20. as to allowing prisoner to escape.*

Offences in relation to Property.

17. *Corrupt dealings in respect of supplies to forces.*
18. *Amendment of s. 24 as to injury to property.*

Offences in relation to False Documents.

19. *False alteration of document.*

Offences in relation to Courts-martial.

20. *Amendment of s. 28. as to power of court-martial over contempt.*

Offences in relation to Enlistment.

21. *Amendment of ss. 32 & 34 as to enlistment of soldiers discharged with disgrace.*

Miscellaneous Military Offences.

22. *Amendment of s. 40 as to charging for offence to the prejudice of good order and military discipline.*

Courts-martial.

23. *Amendment of ss. 47, 48, 51 and 53 as to composition of courts-martial.*
24. *Amendment of s. 54 as to confirmation, revision, and approval of sentences.*
25. *Amendment of s. 56 as to commutation or remission of sentence.*
26. *Amendment of ss. 62, 64 as to prisoners.*

Miscellaneous.

27. *Power as to restitution of stolen property.*

AMENDMENT OF PART II. (ENLISTMENT).*Re-engagement and Prolongation of Service.*

28. *Re-engagement and continuance of service of non-commissioned officers.*

Discharge and Transfer to Reserve Force.

29. *Amendment of s. 83. as to continuance in army service of soldier when on service beyond the seas.*
30. *Amendment of s. 86 as to payment of cost of conveyance of soldier discharged or transferred to the reserve.*

AMENDMENTS OF PART IV. (GENERAL PROVISIONS).*Supplemental Provisions as to Courts-martial.*

31. *Amendment of s. 120 as to convening and confirming of district courts-martial.*
32. *Position of counsel at courts-martial.*

General Provisions as to Prisons.

33. *Amendment of s. 127 as to colonial prisons.*
34. *Amendment of s. 128 as to duty of governors of prisons to receive prisoners.*

Pay.

35. *Amendment of ss. 133 to 135 as to penal stoppages from ordinary pay.*

Legal Penalties in matters respecting Forces.

36. *Punishment of false oath and personation.*

Exemptions of Officers and Soldiers.

37. *Exemption from jury.*

Evidence.

38. *Amendment of s. 156 as to evidence.*

Summary and other Legal Proceedings.

39. *Amendment of ss. 159 and 161 as to prosecution of offences.*

AMENDMENTS OF PART V. (APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS).

Persons subject to Military Law.

40. Amendment of ss. 168 and 169 as to persons subject to military law as officers and soldiers.
41. Amendment of s. 169 as to duty of commanding officer of volunteers.
42. Extension of s. 170 to pensioners.
43. Amendment of s. 171 as to application of the Act to Royal Marines.
44. Amendment of s. 175 as to non-commissioned officer.
45. Amendment of s. 177 as to reserve man.

Definitions.

46. Amendment of s. 180, as to Channel Islands and Isle of Man.
47. Application of Act to persons on board ship.
48. Amendment of s. 181 as to definition of active service in certain cases.
49. Amendment of s. 181 as to definition of "corps."

PART III.

MISCELLANEOUS.

Explanation of Commencement Act as to Application of Part II. of Army Act to Old Soldiers.

50. Explanation of 42 & 43 Vict. c. 32. s. 4. as to position of old soldiers.

Amendment of Regimental Debts Act.

51. Amendment of 26 & 27 Vict. c. 57. as to collection and disposal of effects of deceased officers and soldiers.

Commencement, Savings, and Repeal.

52. Commencement of part of Act.
53. Saving for existing men.
54. Repeal of Acts.
55. Pensions of soldiers formerly in Indian forces.

SCHEDULE.

An Act to amend the Law respecting the Regulation of Her Majesty's Forces, and to amend the Army Discipline and Regulation Act, 1879.
(27th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Regulation of the Forces Act, 1881.

2. The Army Discipline and Regulation Act, 1879, is in this Act referred to and may be cited as the Army Act, 1879.

The expression "militia" means the general militia.

The expression "militiaman" includes a non-commissioned officer.

Expressions in this Act shall, except so far as otherwise provided by this Act or the con-

text otherwise requires, have the same meaning as in the Army Act, 1879, as amended by this Act.

PART I.

AUXILIARY FORCES AND RESERVES.

Regular and Auxiliary Forces.

3. For the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to Her Majesty's forces, it is hereby declared that Her Majesty may, in such manner as to Her Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over Her Majesty's forces, or any part thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised; provided that command shall not be given to any person over a person superior in rank to himself.

Nothing in this section shall be deemed to be in derogation of any power otherwise vested in Her Majesty.

4. (1.) The orders and regulations which

Her Majesty is authorised by the Militia Voluntary Enlistment Act, 1875, to make with respect to the government of the Militia may, subject to the provisions of this Act and of the Acts for the time being in force in relation to the Militia, provide for the formation of militiamen into regiments, battalions, or military bodies, and for the formation of such regiments, battalions, or military bodies into corps, either alone or jointly with any other part of Her Majesty's forces, and for appointing, transferring, or attaching militiamen to corps, and for posting, attaching, or otherwise dealing with militiamen within the corps, and may regulate the appointment, rank, duties, and numbers of the militia officers and non-commissioned officers.

(2.) The said orders and regulations shall not—

- (a.) affect or extend the term for which or the area within which a militiaman is liable under the Acts relating to the Militia to serve; or
- (b.) authorise a militiaman when belonging to one corps to be transferred without his consent to another corps; or
- (c.) where the corps of a militiaman includes any battalion or other body of the regular forces, authorise him to be posted without his consent to that battalion or body.

5. (1.) Any militiaman who commits any of the following offences, that is to say,—without leave lawfully granted, or such sickness or other reasonable cause as may be allowed in accordance with the regulations under the Militia Voluntary Enlistment Act, 1875, fails to appear at the time and place appointed, either for preliminary training, or for training and exercise, or for assembling when embodied, shall—

- (a.) in the case of embodiment be guilty according to the circumstances of deserting within the meaning of section twelve or of absenting himself without leave within the meaning of section fifteen of the Army Act, 1879; and
- (b.) in any other case be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act, 1879.

(2.) A militiaman who commits an offence under this section or under section twelve or section fifteen of the Army Act, 1879, shall, whether otherwise subject to military law or not, be liable to be taken into military custody, and shall be liable as follows; that is to say.

- (a.) be liable to be tried by court-martial and convicted and punished accordingly, or

(b.) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine.

6. (1.) If any person commits any of the following offences, that is to say—

- (a.) when belonging to the Militia, without having fulfilled the conditions enabling him to enlist, enrol, or enter, enlists or enrolls in any of the auxiliary or reserve forces, or enters the Royal Navy; or
- (b.) when belonging to the reserve forces, or to any of the auxiliary forces other than the Militia, or to the Royal Navy, without having fulfilled the conditions enabling him to enlist or enrol, enlists or enrolls in the Militia;

such person, if on service as part of the regular forces at the time when he commits the offence, shall be guilty of fraudulent enlistment within the meaning of section thirteen of the Army Act, 1879, and in any other case shall be punishable for making a false answer within the meaning of section thirty-three of the Army Act, 1879; and for the purpose of this section a person shall be deemed to be on service as part of the regular forces if being a militiaman he is embodied, or if belonging to the reserve forces he is called out on permanent service or on army service, or if belonging to the yeomanry or volunteers he is on actual military service.

(2.) A person who commits an offence under this section, shall, whether otherwise subject to military law or not, be liable to be taken into military custody, and shall be liable as follows; that is to say.

- (a.) be liable to be tried by court-martial and convicted and punished accordingly; or,
- (b.) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to imprisonment with or without hard labour for a term of not less than one month and not more than three months, or to a fine of not less than five pounds and not more than twenty-five pounds, and in default of payment to imprisonment with or without hard labour for any term not less than one month and not more than the maximum term allowed by law for nonpayment of the fine, and in the case of a second or any subsequent conviction to be sentenced to imprisonment with or without hard labour for not less than two and not more than six months.

(3.) A person who attempts to commit an offence under this section shall, whether otherwise subject to military law or not, be liable to be taken into military custody, tried, convicted, and punished in like manner in all respects as if he had committed an offence under this section with this qualification, that if he is convicted by court-martial, he shall not be liable to any punishment exceeding imprisonment, and if convicted by a court of summary jurisdiction, this section shall apply as if the terms of imprisonment or amounts of fine were reduced by one half.

7. (1.) If a person commits any of the following offences, that is to say,

- (a.) having been discharged with disgrace from any part of Her Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the Militia without declaring the circumstances of his discharge or dismissal; or,
 - (b.) is concerned when subject to military law in the enlistment for service in the Militia of any man when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against this Act,
- such person shall be guilty of an offence.

(2.) A person guilty of an offence under this section shall, whether otherwise subject to military law or not be liable to be taken into military custody and shall be liable as follows:—

- (a.) be liable to be tried by court-martial, and on conviction to suffer such punishment as is imposed for the like offence by section thirty-two or thirty-four of the Army Act, 1879, as the case may be; or
- (b.) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to imprisonment with or without hard labour for any term not less than two and not more than six months.

(3.) For the purpose of this section the expression "discharged with disgrace" means discharged with ignominy, discharged as incorrigible and worthless, or discharged on account of a conviction for felony or a sentence of penal servitude.

8. (1.) In the case of a person charged with the offence of desertion, absence without leave, fraudulent enlistment, false answer, or any offence in connexion with enlistment under this Act—

- (a.) The alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either of such courts, according

as any general or special regulations of the Secretary of State may direct:

- (b.) Proceedings against the alleged offender when a militiaman, whether before a court-martial or a court of summary jurisdiction, may be instituted, whether the term of his militia service has or has not expired, at any time within two months after the offence becomes known to the commanding officer of the militiaman, if the militiaman is then apprehended, or, if not, within two months after he is apprehended:
- (c.) Where an offender has on several occasions been guilty of any such offence as above mentioned, he may, for the purposes of any proceedings against him, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge the offender with any number of the above-mentioned offences at the same time, and to give evidence of such offences against him, and if he be convicted of more than one offence to punish him accordingly, as if he had been previously convicted of any such offence.

(2.) Section one hundred and forty-seven of the Army Act, 1879, shall apply to a militiaman who is a deserter or absentee without leave, within the meaning of this Act or of the Army Act, 1879, in like manner as it applies to a deserter in that section mentioned.

(3.) Any person who falsely represents himself to any military, naval, or civil authority to be a deserter or absentee without leave from the militia shall, on conviction by a court of summary jurisdiction, be liable to imprisonment with or without hard labour for a term not exceeding three months.

(4.) Nothing in this Act shall affect the application of sections sixty-one, sixty-two, and sixty-three of the Militia Voluntary Enlistment Act, 1875, to any militiaman.

Volunteers.

9. Whereas under the Volunteer Act, 1863, provision is made for the government and organisation of volunteer corps whose services are accepted by Her Majesty, and for all lands, money, effects, and other property belonging to the corps, (in this Act referred to as the corps property,) being vested in the commanding officer of the corps for the time being, and being managed in accordance with rules of the corps made under that Act:

And whereas provision is also made by the said Act for separate volunteer corps being formed under the authority of the Secretary of

State into a united body for military and administrative purposes:

And whereas under the authority of the Secretary of State separate volunteer corps (in this Act referred to as constituent corps) have been consolidated into one corps, and form corresponding companies in such consolidated corps, and doubts have arisen with respect to such consolidation, and it is expedient to remove those doubts: Be it therefore enacted as follows:

(1.) Every volunteer corps formed under the authority of the Secretary of State, whether before or after the passing of this Act, by the consolidation of two or more volunteer corps, shall as from the date of consolidation be deemed to have been a volunteer corps duly formed under the Volunteer Act, 1863, whose services have been accepted by Her Majesty, and the officers and volunteers belonging to the constituent corps shall be deemed to have been duly appointed and enrolled as officers and volunteers of the consolidated corps, and the commanding officer of the consolidated corps shall for the purposes of the Volunteer Act, 1863, be deemed to be the commanding officer thereof and of every part thereof, and the corps property vested in and the liabilities attached to the commanding officer of the constituent corps on behalf of the corps shall be deemed on consolidation to have become vested in and attached to the commanding officer of the consolidated corps, and all agreements with, grants to, and deeds and documents in favour of any of the constituent corps shall enure for the benefit of and be deemed to refer to the companies in the consolidated corps which correspond to the said constituent corps.

(2.) The said property shall be managed in such manner and for such purposes as, subject to the proviso in this section contained, is directed by the rules of the consolidated corps;

Provided that if and so long as any companies in the consolidated corps which correspond to the said constituent corps continue to exist, and if no other arrangement has been made either before or after the passing of this Act, then, if byelaws are from time to time made for the purpose with the approval of the commanding officer of the consolidated corps, such byelaws, so far as they extend, shall, to the exclusion of the said rules, determine the manner and purposes in and for which such property shall be managed.

(3.) The officers and volunteers of the companies in the consolidated corps which correspond to the said constituent corps, shall indemnify the commanding officer of the consolidated corps against all debts and lia-

bilities for which the constituent corps was liable before the consolidation, or which may subsequently arise in respect of the property held by him, which is managed in accordance with the byelaws in this section mentioned.

(4.) No officer or volunteer who belonged to a constituent corps at the time of its consolidation shall, without his consent, be removed to any of the companies not corresponding to that corps.

(5.) Any question which arises under this section as to whether any companies do or do not correspond to a constituent corps, or continue to exist, and any difference between the companies and the consolidated corps, or the commanding officer thereof, in relation to the byelaws, property, debts, or liabilities referred to in this section, shall be referred for the decision of the Secretary of State, whose decision shall be final.

(6.) The provisions of this section with respect to companies shall apply to troops and batteries respectively, and the provisions of this section with respect to companies corresponding to constituent corps, shall apply to the case of a single troop, battery, or company corresponding to a constituent corps.

Reserves.

10. (1.) For the purpose of establishing a Supplemental Reserve it shall be lawful for Her Majesty to authorise men to be enrolled in the first class of the army reserve force under the condition that they are not to be called out for permanent service until the whole of the remainder of the said first class have been called out for permanent service, and regulations may from time to time be made under the Reserve Force Act, 1867, for carrying into effect this section.

11. Where a militiaman who is enlisted in the militia reserve force re-engages as a militiaman, he may also re-engage in the militia reserve force for the same term for which he re-engages in the militia, and may so re-engage in the manner and subject to the conditions provided by the regulations under the Militia Reserve Act, 1867, and regulations may from time to time be made under that Act for the purpose.

12. Whereas under the Acts of 1867 relating to the army and militia reserve forces, the men who entered those forces under those Acts are liable when called out to serve for an indefinite period, and it is desirable to limit that period to the period for which men transferred to the reserve force under the Army Act, 1879, are liable to serve when called out, and otherwise

to amend the enactments relating to the said reserve forces: Be it therefore enacted that—

(1.) Men in the army and militia reserve forces when called upon by proclamation of Her Majesty in pursuance of the enactments relating to those forces respectively to enter on permanent service or on army service, as the case may be, shall be liable to serve until Her Majesty no longer requires their services, so, however, that a man shall not be required to serve for a period exceeding in the whole the remainder unexpired of his term of service in the reserve force to which he belongs, and the further period of twelve months during which the service of a soldier of the regular forces may be prolonged under section eighty-three of the Army Act, 1879.

(2.) When a man is called out by such a proclamation as aforesaid, he shall during his service form part of the regular forces and be subject to the Army Act 1879 accordingly, and the competent military authority within the meaning of Part II. of that Act may, if it seems proper, appoint him to any corps as a soldier of the regular forces, and within three months afterwards transfer him to any other corps, so, however, that he shall be appointed or transferred only to a corps in the arm or branch in which he previously served.

(3.) Any such proclamation of Her Majesty as above in this section mentioned may extend to all or any of the men in the army and militia reserve forces or either of them.

(4.) Men in the army and militia reserve forces shall be liable to be called out annually for training and exercise for such times as the Secretary of State may from time to time direct, not exceeding in the case of a man in the army reserve force twelve days or twenty drills, and in the case of a man in the militia reserve force fifty-six days. Every such man during his annual training and exercise may be attached to and trained with a body of the regular or auxiliary forces.

The annual training and exercise under this section of a man in the militia reserve force shall be in substitution for the annual training and exercise to which he is liable as a militiaman, and the provisions of the Militia Voluntary Enlistment Act, 1875, and this Act, as to attendance at such last-mentioned annual training, and to the punishment for non-attendance, shall apply to the training and exercise under this section.

13. Whereas by the Reserve Force Act, 1867, the Secretary of State has power to make regulations respecting the pensions of men belonging to the army reserve force:

And whereas doubts have arisen as to whether the pensions payable to men in pursuance of

those regulations can in all cases be awarded and paid by the Commissioners of Chelsea Hospital, and it is expedient to remove such doubts; be it therefore enacted as follows:—

Where, either before or after the passing of this Act, a man in the army reserve force has been called out for permanent service, and at the termination of such service has been returned to the army reserve force, and has become entitled to pension under any regulation by the Secretary of State, made either before or after the passing of this Act, or before or after such calling out or return, then the Commissioners of Chelsea Hospital shall have the same power to award and pay the said pension, and otherwise in relation to the said pension, as they would have if such man had been discharged from the army on reduction.

PART II.

AMENDMENTS OF THE ARMY DISCIPLINE AND REGULATION ACT, 1879.

Preliminary.

14. This part of this Act shall be construed as one with the Army Act, 1879, and shall continue in force only for the same time and subject to the same provisions as that Act, and together with that Act and sections four, five, and seven of the Army Discipline and Regulation (Annual) Act, 1881, may be cited as the Army Acts 1879 and 1881.

AMENDMENTS OF PART I. (DISCIPLINE).

CRIMES AND PUNISHMENTS.

Desertion, fraudulent Enlistment, and Absence without Leave.

15. For the purposes of the liability of an offender convicted under section twelve or section thirteen of the Army Act, 1879, of the offence of desertion, or of fraudulent enlistment, or any other offence in those sections mentioned, to the higher punishment imposed by those sections for a second offence, a previous offence under one section may be reckoned as a previous offence under the other section, with this exception, that the absence of the offender next before any fraudulent enlistment, shall not upon his conviction for that fraudulent enlistment be reckoned as a previous offence of desertion.

Offences in relation to Prisoner.

16. In substitution for sub-section two of section twenty of the Army Act, 1879, there shall be enacted the following provision:

Every person subject to military law who commits any of the following offences; that is to say,

Wilfully, or without reasonable excuse, allows to escape any prisoner who is committed to his charge, or whom it is his duty to keep or guard, shall be liable, if he acted wilfully, to suffer penal servitude or such less punishment as in the said Act mentioned, and in any case shall be liable to suffer imprisonment or such less punishment as is in the Army Act 1879 mentioned.

Offences in relation to Property.

17. In substitution for section twenty-three of the Army Act, 1879, there shall be enacted the following section:

Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or
- (2.) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of Her Majesty's forces, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in the Army Act, 1879, mentioned.

18. Whereas a soldier guilty of the offence of injuring property is punishable only under section forty or section forty-one of the Army Act, 1879, and it is expedient expressly to declare such offence, be it therefore enacted that there shall be added to section twenty-four of the Army Act 1879 the following enactment:

Every soldier who commits any of the following offences; that is to say,

Wilfully injures any thing in section twenty-four of the Army Act 1879 mentioned, or any property belonging to a comrade, or to an officer, or to any regimental mess or band, or to any regimental institution, or any public property, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in the Army Act 1879 mentioned.

Offences in relation to False Documents.

19. There shall be added to section twenty-five of the Army Act, 1879, the following enactment:

Every person subject to military law who commits the following offence; that is to say,

Knowingly and with intent to defraud or injure any person, defaces or alters any document which it is his duty to preserve, shall on conviction by court-martial be liable to suffer imprisonment or such less punishment as is in the Army Act, 1879, mentioned.

Offences in relation to Courts-martial.

20. (1.) A court-martial shall have the same power in relation to a prisoner who is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of the court, as the court have under section twenty-eight of the Army Act, 1879, in relation to any other person subject to military law.

(2.) Where a person not subject to military law commits any offence as a witness before a court-martial, or is guilty of contempt of a court-martial, in any part of India, the court-martial may take the same proceedings as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.

Offences in relation to Enlistment.

21. Sections thirty-two and thirty-four of the Army Act, 1879, shall extend to the case of a person who on account of conviction for felony or of a sentence of penal servitude, has been either discharged from any portion of Her Majesty's forces or dismissed from the navy, in like manner as they apply to the case of a person discharged with ignominy from the regular forces, or dismissed with disgrace from the navy.

Miscellaneous Military Offences.

22. Notwithstanding the proviso in section forty of the Army Act, 1879, to the effect that no person shall be charged under that section in respect of an offence for which special provision is made in another part of the said Act, the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of the said proviso, unless it appears that injustice has been done to the person charged by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction.

Courts-martial.

23. (1.) A regimental court-martial may be convened by an officer of any rank, not below

the rank of captain, when in command, of two or more corps or portions of two or more corps.

(2.) A regimental court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than one whole year.

(3.) A general court-martial shall consist in the United Kingdom, India, Malta, and Gibraltar of not less than nine, and elsewhere of not less than five officers, each of whom must have held a commission during not less than three whole years, and of whom at least five must be of a rank not below that of captain.

(4.) A district court-martial shall consist in the United Kingdom, India, Malta, and Gibraltar of not less than five, and elsewhere of not less than three officers, each of whom must have held a commission during not less than two whole years.

(5.) Any reference in the Army Act, 1879, to the number of members of a court-martial named in the order convening the court shall be deemed to refer to the minimum mentioned in this section for a general, district, or regimental court-martial as the case may be.

24. Section fifty-four of the Army Act, 1879, shall be amended as follows:—

(1.) Where a court-martial is held in a colony, and there is no superior officer in that colony competent to confirm the finding and sentence of the court-martial in the case specified in sub-section four of section fifty-four of the Army Act, 1879, the governor of that colony shall have power to confirm the finding and sentence of the court-martial in like manner in all respects as if he were such superior officer as above mentioned.

(2.) A confirmation may be withheld under sub-section five of the said section, either wholly or partly, and that sub-section shall apply accordingly.

(3.) Nothing in sub-section eight of the said section shall apply to any offence committed on active service.

25. In addition to the other authorities who have power under section fifty-six of the Army Act, 1879, to mitigate, remit, and commute the punishment awarded by a court-martial in the case of persons undergoing sentence in any place whatever, any prescribed officer shall have that power.

26. Sub-section four of section sixty-four of the Army Act, 1879, shall apply to a military prisoner, where the sentence of imprisonment was passed upon him in the United Kingdom, as well as in a case where it was passed upon him in India or a colony.

Miscellaneous.

27. (1.) Where a person has been convicted by court-martial of having stolen, embezzled, received knowing it to be stolen, or otherwise unlawfully obtained, any property, and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such court-martial, or the Commander-in-Chief, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(2.) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or Commander-in-Chief to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3.) Moreover where it appears to the confirming authority or Commander-in-Chief from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or Commander-in-Chief may, on the application of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the said sale or pawning shall be paid to the said person purchasing or taking in pawn.

(4.) An order under this section shall not bar the right of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.

AMENDMENT OF PART II. (ENLISTMENT).

Re-engagement and Prolongation of Service.

28. The regulations from time to time made in pursuance of Part II. of the Army Act, 1879, with respect to the enlistment of men in the regular forces, may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage, under section eighty-one, and to continue his service, under section eighty-two of the said Act, or to do either of such things, subject, nevertheless, to the veto of the Secretary of State or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations.

Discharge and Transfer to Reserve Force.

29. In the case of a soldier enlisted after the commencement of this Act the competent military authority shall not have power under section eighty-three of the Army Act, 1879, by reason only of such soldier being on service beyond the seas, to detain him in army service for any period after the time at which he would otherwise, by the conditions of his service, be entitled to be transferred to the reserve.

30. In lieu of sub-section five of section eighty-six of the Army Act, 1879, the following enactment shall have effect:

A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement or is transferred to the reserve shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been attested, or to any place at which he may at the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost.

AMENDMENTS OF PART IV. (GENERAL PROVISIONS.)

Supplemental Provisions as to Courts-martial.

31. The powers conferred by section one hundred and twenty of the Army Act, 1879, in relation to district courts-martial may be exercised by any officer or person authorised to convene general courts-martial, whether he is so authorised by warrant of Her Majesty or by warrant from any officer authorised by Her Majesty.

32. Whereas it is expedient to make provision respecting the conduct of counsel when appearing on behalf of the prosecution or defence at general courts-martial, as provided or about to be provided by rules of procedure made in pursuance of section sixty-nine of the Army Act, 1879; be it therefore enacted as follows:

(1.) Any conduct of a counsel which would be liable to censure, or be a contempt of court, if it took place before Her Majesty's High Court of Justice in England, shall likewise be deemed liable to censure or a contempt of court, in the case of a court-martial; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct,

and, if persevered in, be deemed a contempt of court.

(2.) Where a counsel is guilty of conduct liable to censure, or of a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-three of the Army Act, 1879, and the president of the court-martial may certify the same to a court of law accordingly; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

(3.) A court-martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as, in the opinion of the court-martial, requires his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the above-mentioned section of the Army Act, 1879.

General Provisions as to Prisons.

33. (1.) Nothing in section one hundred and twenty-seven of the Army Act, 1879, shall require any military convict or military prisoner to be sent to a convict establishment or prison within the United Kingdom, where he belongs to a class with respect to which a Secretary of State has declared that, by reason of the climate or place of his birth or the place of his enlistment, or otherwise, it is not beneficial to the prisoner to transfer him to the United Kingdom; every such declaration shall be laid before both Houses of Parliament.

(2.) For the purpose of removing doubts it is hereby declared that any order in relation to the execution of the sentence, which can be made under the said section by the court, may be made by the confirming authority in confirming the finding and sentence, and also may be made in the case of any commutation or remission of sentence, by the authority commuting or remitting the sentence.

34. Every governor of a prison or other person who under section one hundred and twenty-eight of the Army Act, 1879, is required to receive persons delivered into his custody by military authorities as therein mentioned, shall receive into his custody, for a period not exceeding seven days, any soldier in military custody, upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.

Pay.

35. (1.) There may be deducted under section one hundred and thirty-four of the Army Act,

1879, from the ordinary pay due to a soldier of the regular forces, in addition to the deductions therein mentioned,—

- (a) all ordinary pay for every day of imprisonment under detention on a charge for absence without leave for which he is afterwards awarded imprisonment by his commanding officer; and
- (b) where at the time of his enlistment he belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces; and
- (c) any sum which he is liable to pay by reason of quitting any part of the auxiliary forces upon his enlistment; and
- (d) when he is on board one of Her Majesty's ships all ordinary pay for every day of imprisonment awarded by the commanding officer of that ship, and also such sums as the commanding officer of that ship may award, and that commanding officer shall have power to award the same deductions as a court-martial can award under section one hundred and thirty-four of the Army Act, 1879.

(2.) Any deduction of pay under the Army Act, 1879, or this Act, may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Secretary of State.

(3.) Any regulation or order under section one hundred and thirty-six of the Army Act, 1879, declaring what is to be deemed for the purpose of the provisions of that Act relating to deductions from pay to constitute a day of absence, shall not declare any time to be reckoned as a day unless the absence has lasted for six hours or upwards, whether wholly in one day or partly in one day and partly in another, or unless such absence prevented the man from fulfilling any military duty which was thereby thrown upon some other person.

Legal Penalties in matters respecting Forces.

36. (1.) Where any regulations made by the Secretary of State or the Commissioners of Her Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connexion

with such payment, such oath may be administered and declaration taken by the person specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

(2.) Any person who falsely represents himself to any military, naval, or civil authority to be a man in or to be a particular man in the regular, reserve, or auxiliary forces shall be deemed to be guilty of personation.

(3.) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds.

(4.) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

Exemptions of Officers and Soldiers.

37. Every soldier in Her Majesty's regular forces shall be exempt from serving on any jury.

Evidence.

38. Section one hundred and fifty-six of the Army Act, 1879, shall be amended as follows:—

- (1.) For the purposes of sub-section (b) of the section one hundred and fifty-six of the Army Act, 1879, "a letter" shall be deemed to include a return or other document.
- (2.) Sub-section (d) of the said section shall extend to a gazette as well as to an army list purporting to be published and printed as therein mentioned.
- (3.) In lieu of sub-section (g) of the said section the following provision shall have effect:—

Where a record is made in one of the regimental books in pursuance of any Act or of the Queen's Regulations, or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated.

- (4.) The said section and this section shall

apply to all proceedings under any Act relating to any of the auxiliary forces as well as to proceedings under the Army Act, 1879.

Summary and other Legal Proceedings.

39. (1.) Any offence against the Army Act, 1879, or this Act, or any Act for the time being in force amending the same, which is punishable by a court of summary jurisdiction may be prosecuted, and the fine or forfeiture in respect thereof may be recovered, before a court of summary jurisdiction having jurisdiction either in the place where the offence was committed, or in the place where the offender may for the time being be.

(2.) Where the maximum fine or imprisonment which a court of summary jurisdiction in England when sitting in an occasional court house is authorised by law to impose is less than the minimum fine or imprisonment fixed by the Army Act, 1879, or this Act, or by any Act relating to any of the auxiliary forces, the court may impose the maximum fine or imprisonment which the court is authorised by law to impose, but if required by either party shall adjourn the case to the next practicable petty sessional court.

AMENDMENTS OF PART V. (APPLICATION OF MILITARY LAW. SAVING PROVISIONS AND DEFINITIONS).

Persons subject to Military Law.

40. Where any force of volunteers, or of militia, or any other force, is raised in India or in a colony, any law of India or the colony may extend to the officers, non-commissioned officers, and men belonging to such force, whether within or without the limits of India or the colony; and where any such force is serving with part of Her Majesty's regular forces, then so far as the law of India or the colony has not provided for the government and discipline of such force, the Army Act, 1879, as amended by this Act and by any other Act for the time being, shall, subject to such exceptions and modifications as may be specified in the general orders of the general officer commanding Her Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers, and men respectively mentioned in sections one hundred and sixty-eight and one hundred and sixty-nine of the Army Act, 1879.

41. The following provision shall be substituted for the provisions in section one

hundred and sixty-nine of the Army Act, 1879, with respect to the duty of the commanding officer of any volunteer corps; that is to say,

It shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service.

42. Section one hundred and seventy of the Army Act, 1879, shall apply to pensioners in like manner in all respects as it applies to non-commissioned officers and men belonging to the auxiliary forces.

43. There shall be added to section one hundred and seventy-one of the Army Act, 1879, as regards the Royal Marines, the following sub-sections:

(1.) Without prejudice to any power of confirmation by the Admiralty or any officer authorised by them the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorised under sub-section one of section one hundred and seventy-one of the Army Act, 1879, to convene the same, or by any officer otherwise authorised under the Army Act, 1879, or the Acts for the time being amending the same, to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces.

(2.) Any power vested in Her Majesty by the Army Act, 1879, in relation to the making of rules or to any order with respect to pay or to any complaint in respect of an officer who thinks himself wronged shall, as regards the Royal Marines, be vested in and exercised by the Admiralty, and the provisions of that Act relating to such rules, orders, and complaints respectively shall be construed so far as respects the Royal Marines as if "the Admiralty" were substituted for Her Majesty, as well as for the Secretary of State.

(3.) In the provisions of the said Act and of this Act with respect to evidence, the expression "Queen's Regulations" shall be deemed to include Admiralty Regulations.

(4.) If any officers or men of the Royal Marines while borne on the books of any ship commissioned by Her Majesty (other-

wise than for service on shore) are employed on land, the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment, be subject to military law under the Army Act, 1879, and while such order is in force they shall be subject to military law under the Army Act, 1879, accordingly.

(5.) Any provision of the said Act with respect to canteens under the authority of the Secretary of State, shall apply to canteens under the authority of the Admiralty.

44. There shall be added to section one hundred and seventy-five of the Army Act, 1879, the following enactments:—

(1.) A non-commissioned officer sentenced by court-martial to penal servitude or imprisonment shall be deemed to be reduced to the ranks.

(2.) An army schoolmaster shall not be liable to be reduced to the ranks, but may nevertheless be sentenced by a court-martial to penal servitude or imprisonment, or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude or imprisonment, shall be deemed to be dismissed.

(3.) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

45. (1.) Any man who is enrolled in or has entered the army reserve force and commits any of the following offences, that is to say,—

(a) by any fraudulent means obtains or causes to be obtained any pay or other sum contrary to the regulations of a Secretary of State with respect to the army reserve force; or

(b) being present at any place for the receipt of pay uses threatening or insulting language or behaves in an insubordinate manner to any person who would be his superior officer if he were subject to military law,

shall be liable to be apprehended, tried, and punished in like manner as if such offence were mentioned in section one hundred and seventy-seven of the Army Act, 1879.

(2.) Where any such man commits, in the presence of any officer, any offence under the said section or this section, or under the section

of this Act relating to the punishment of personation, that officer may order him to be taken into military custody in like manner as if the man were subject to military law, or, if he thinks fit, may order him to be taken into custody by any constable and brought before a court of summary jurisdiction for the purpose of being dealt with by such court.

Definitions.

46. For the purpose of the provisions of the Army Act, 1879, relating to the execution of sentences and to prisons, any sentence of penal servitude or imprisonment passed in the Channel Islands or the Isle of Man shall be deemed to have been passed in a colony.

47. Where a person subject to military law is on board a ship, the Army Act, 1879, and the Acts for the time being amending the same, shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is sentenced while so on board ship, any finding and sentence, so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

48. Where the governor of a colony in which any of Her Majesty's forces are serving, or if the forces are serving out of Her Majesty's dominions, the general officer commanding such forces, declares at any time or times that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that the forces in the colony or under his command, as the case may be, should be temporarily subject to the Army Act, 1879, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that the period mentioned in any one declaration do not exceed three months from the date thereof.

If at any time during the said period the governor or general officer for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

The Secretary of State may, if he thinks fit, annul a declaration or renewal purporting to be made in pursuance of this section, without prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect.

49. In lieu of the portions of the definition of the expression "corps" in section one hundred and eighty-one of the Army Act, 1879, which are repealed by this Act, the following definition shall have effect:

(1.) The expression "corps" means—

(a.) In the case of Her Majesty's regular forces—

any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by royal warrant to be a corps for the purposes of the Army Act, 1879, and is a body formed by Her Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the regular forces, and in either case with or without the whole or any part of the permanent staff of any of the auxiliary forces not included in such military body;

and any reference in part two of the Army Act, 1879, to a corps of the regular forces shall be deemed to refer to any such military body as is herein-before defined to form a corps; and

(b.) In the case of Her Majesty's auxiliary forces—

any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by royal warrant to be a corps for the purposes of the Army Act, 1879, and is a body formed by Her Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the auxiliary forces, and either inclusive or exclusive of the whole or any part of the per-

manent staff of any part of the auxiliary forces;

and any reference in the Army Act, 1879, to a corps of militia shall be construed to refer only to a battalion or battalions of militia.

(2.) In the application of this definition to cavalry, artillery, or engineers the expression "battalion" shall be construed to mean regiment, brigade, or other body into which Her Majesty may have been pleased to divide such cavalry, artillery, or engineers.

PART III.

MISCELLANEOUS.

Explanation of Commencement Act as to Application of Part II. of Army Act to Old Soldiers.

50. Whereas by section four of the Army Discipline and Regulation (Commencement) Act, 1879, it is enacted as follows:

"The commencement of the Army Discipline Act shall not, nor shall the expiration of any enactment contained in the Army Mutiny Act, or the Marine Mutiny Act, affect the position of any soldier enlisted or re-engaged before the commencement of the Army Discipline and Regulation Act, 1879, as respects the reckoning of service, the forfeiture of service, his liability to serve or to be detained in service, or his liability to transfer from one corps to another or to the reserve, and the enactments relating to those matters, including any Article of War, shall continue to apply to such soldier unless he consents to the application to him of the provisions of Part Two of the Army Discipline and Regulation Act, 1879, relating to the same matters."

And whereas it is expedient to explain more precisely the provisions which apply to soldiers so enlisted or re-engaged as aforesaid: Be it therefore declared as follows:

The following enactments shall apply to soldiers enlisted or re-engaged before the commencement of the Army Act, 1879, who have not consented to the application to them of the provisions of Part Two of that Act; that is to say,

(1.) Part Two of the Army Act, 1879, shall, so far as is consistent with the tenor thereof, apply after the commencement of this Act to every such soldier except as provided by this section.

(2.) The following provisions, namely,—

(a.) The whole of section seventy-six (which section relates to reckoning and forfeiture of service);

(b.) So much of section eighty-three as allows

a soldier to be detained in service otherwise than while a state of war exists or while he is on service beyond the seas ;

(c.) So much of section eighty-four as relates to any person continuing in or re-entering upon army service for a period during which his service may be prolonged ; and

(d.) The whole of section eighty-five (which section relates to the power to transfer a soldier to the reserve before the expiration of his term of army service),

shall not apply without his consent to any such soldier.

(3.) Any re-engagement entered into by a soldier at any time since the commencement of the Army Act, 1879, shall be deemed to be a consent by him to the application to him of the above-named provisions ; and any soldier who after the commencement of this Act extends his army service for all or any part of the residue of the unexpired term of his original enlistment, or gives notice to his commanding officer of his desire to continue in Her Majesty's service, shall be deemed to have consented to the application to him of the above-named provisions.

(4.) For the purpose of discharge or of transfer to the reserve, the service of any such soldier, to whom section seventy-six of the Army Act, 1879, does not apply, shall be reckoned in accordance with the enactments in accordance with which it would have been reckoned if the Army Act, 1879, and this Act had not passed ;

Provided that such service may with the consent of the soldier and the approval of the competent military authority, as defined by Part Two of the Army Act, 1879, be reckoned from the date of his attestation without any deduction on account of age, imprisonment, desertion, absence without leave, or otherwise, or without deduction on account of any one or more of such matters.

(5.) Any such soldier shall not be liable to be detained in service, or have his service prolonged without his consent, further or otherwise than he would have been liable to if the Army Act, 1879, had not passed.

(6.) Nothing in sub-sections four and five of section eighty of the Army Act, 1879, shall extend without his consent to any soldier who enlisted on or after the twentieth day of June one thousand eight hundred and sixty-seven, and before the ninth day of August one thousand eight hundred and seventy, and who has not re-engaged.

Amendment of Regimental Debts Act.

51. Subject to any regulations made by Her Majesty by warrant for the better execution of

the Regimental Debts Act, 1863, as amended by this Act,—

(1.) The committee of adjustment shall have power to postpone and dispense with the sale of all or any of the effects of the deceased, and when out of the United Kingdom to pay all the debts and collect all the assets of the deceased, and to transfer their worth to any official administrator, but at any time, upon the preferential charges being paid or secured by any person, shall cease further to interfere, except so far as they may be requested so to do, by or on behalf of such person ; and

(2.) The paymaster, officer, or other person receiving any surplus, when out of the United Kingdom, may pay thereof his expenses in relation to the surplus, and also any debts of the deceased, and may pay over sums to the representative, widow, or relatives of the deceased, although not present at head-quarters ; and

(3.) The Secretary of State for War or for India in Council may act under the Regimental Debts Act, 1863, in relation to any amount due to a deceased officer or soldier, although no surplus is remitted to him, and may, after such notice only (if any) as is determined by the regulations, dispose of the residue or any sums in his hands on account of a deceased officer or soldier, and may dispose of the same, if not exceeding one hundred pounds, among the persons appearing to him to be beneficially entitled to the personal property of the deceased or any of them ; and

(4.) The Regimental Debts Act, 1863, shall apply, whether within or without Her Majesty's dominions, to all persons subject to military law as officers or soldiers in like manner as if they were respectively included in the terms officer and soldier, with the exception that the Act shall apply to all warrant officers as if they were officers.

Commencement, Savings, and Repeal.

52. This Act shall come into operation as follows ; that is to say,

(a.) In the United Kingdom, the Channel Islands, and the Isle of Man at the expiration of one month after the passing of this Act ;

(b.) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, at the expiration of two months after the passing of this Act ; and

(c.) Elsewhere, whether within or without Her Majesty's dominions, at the expiration of six months after the passing of this Act.

And the day upon which this Act so comes into force in any place is in this Act in refe-

rence to such place referred to as the commencement of this Act;

Provided that this Act shall, if promulgated in any general order in any place out of the United Kingdom, the Channel Islands, and the Isle of Man, come into full force in that place from and after the date named in such general order, anything in this section contained to the contrary notwithstanding, and such date shall be deemed in reference to such place to be the commencement of this Act.

53. Where a man belonging to the regular forces, reserve forces, or the militia was enlisted before the passing of this Act, or before the date of an order or regulation made under this Act, nothing in this Act shall require such man without his consent to serve in, or be appointed, transferred, posted, or attached to any military body in or to which he could not have been required without his consent to serve, or be appointed, transferred, posted, or attached if this Act or the said order or regulation, as the case may be, had not been made, or to serve for any longer period than that for which he was before the passing of this Act, or before the date of such order or regulation, as the case may be, liable to serve.

54. The Acts specified in the Schedule to this Act shall be repealed as from the commencement of this Act to the extent in the third column of that Schedule specified.

Provided that—

(a.) This Act, or any repeal by this Act, shall not affect anything done or suffered, or any rights or liabilities acquired or accrued, before the commencement thereof, and any proceedings for carrying into effect anything commenced before the commencement of this Act may be carried on and completed as if this Act had not passed.

(b.) Any liability to service or annual training under any enactment hereby repealed shall, as regards any man to whom the provisions of this Act with respect to such service or training do not apply, continue and be enforced as if the enactment had not been repealed.

(c.) Any enactment relating to the reckoning of the service of a soldier for the purpose of discharge shall continue to apply, so far as is necessary for the purposes of this

Act, as regards any soldier to whom section seventy-six of the Army Act, 1879, does not apply.

(d.) In the case of any offence committed before the commencement of this Act, if any proceeding for the trial or punishment of the offender has been commenced before the commencement of this Act, such proceeding may be carried on and completed, and the offender may be tried and punished, as if this Act had not passed, but, save as aforesaid, this Act shall apply to the arrest, trial, conviction, and punishment of a person accused of an offence committed before the commencement of this Act, so however that a person shall not be subject to any greater punishment than he is subject to before the commencement of this Act, nor to any punishment for anything done before the commencement of this Act which at the time of its being done was not an offence punishable by law.

55. Whereas under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter seventy-four, intituled "An Act to render lawful the enlistment of persons transferred from the Indian to the general forces of Her Majesty," and to provide in certain respects for the rights of such persons," it was provided that where a soldier was transferred from Her Majesty's Indian forces to Her Majesty's general forces it should be lawful for the Commissioners of Chelsea Hospital to calculate the pension of such person in accordance with the regulations either of Her Majesty's Indian or of Her Majesty's general forces, according as such soldier might choose:

And whereas doubts have arisen as to whether certain additions to pensions granted by Royal Warrant to the above-mentioned soldiers in respect of service over and above the term of twenty-one years can, having regard to the above-recited Act, be lawfully granted by the said Commissioners to the said soldiers, and it is expedient to remove such doubts: Be it therefore enacted as follows:

Nothing in the Act above in this section recited shall prevent the Commissioners of Chelsea Hospital from granting to a soldier such pension as is for the time being authorised by Royal Warrant.



SCHEDULE.

ENACTMENTS REPEALED.

A description or citation of a portion of an Act in this Schedule is inclusive of the word, section, or other part first and last mentioned or otherwise referred to as forming the beginning, or as forming the end, of the portion described in the description or citation.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
42 Geo. 3. c. 68.	An Act to enable His Majesty to accept and continue the services of certain troops or companies of yeomanry in Ireland.	Section seven.
43 Geo. 3. c. 61.	An Act for the relief of soldiers, sailors, and marines, and the widows of soldiers in the cases therein mentioned so far as relates to England.	The whole Act.
44 Geo. 3. c. 54.	An Act to consolidate and amend the provisions of the several Acts relating to corps of yeomanry and volunteers in Great Britain, and to make further regulations relating thereto.	Section twenty-one, section twenty-five.
47 Geo. 3. sess. 2. c. 25.	An Act for the more convenient payment of half-pay and pensions, and other allowances to officers and widows of officers, and the persons upon the compassionate list.	The whole Act except section four.
51 Geo. 3. c. 103.	An Act to authorise the allowing officers to retire on half-pay or other allowances under certain restrictions.	So much as is unrepealed.
52 Geo. 3. c. 151.	An Act to extend the provisions of an Act of the last session of Parliament relating to the half-pay and allowance of officers retiring from service, and to authorise the allowing to foreign officers wounded the like pensions and allowances as are given to British officers under the like circumstances.	The whole Act.
50 Geo. 3. c. 87.	An Act to amend two Acts relating to the raising men for the service of the East India Company, and the quartering and billeting such men, and to trials by regimental courts-martial.	So much as is unrepealed.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
51 Geo. 3. c. 75.	An Act for making further provision for the payment of salaries and other charges in the office of the Commissioners for the Affairs of India, and for enabling the East India Company to restore to the service of the said Company military officers removed therefrom by sentences of courts-martial, and to authorise the said Company, in cases of unforeseen urgency, to take up ships by private contract.	So much as is unrepealed.
58 Geo. 3. c. 73.	An Act for regulating the payment of regimental debts, and the distribution of the effects of officers and soldiers dying in service, and the receipt of sums due to officers.	So much as is unrepealed.
2 & 3 Will. 4. c. 106.	An Act to enable officers in His Majesty's army and their representatives, and the widows of officers and persons on the compassionate list, and also civil officers on retired or superannuation allowances payable by the Paymaster-General of His Majesty's forces, to draw for and receive their half-pay and allowances.	The whole Act.
7 Will. 4. & 1 Vict. c. 29.	An Act for enabling Her Majesty to grant the rank of general officers to foreigners now bearing Her Majesty's commission, and to permit the enlistment of foreigners under certain restrictions.	So much as is unrepealed.
7 & 8 Vict. c. 18.	An Act to remove doubts as to the power of appointing, convening, and confirming the sentences of courts-martial in the East Indies.	The whole Act.
10 & 11 Vict. c. 37.	An Act for limiting the time of service in the army.	The whole Act.
10 & 11 Vict. c. 63.	An Act for limiting the time of service in the Royal Marine forces.	Section two; section three, from "to serve" to the end of the section; section four, from "according to the form" to the end of the section, and the schedules.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
20 Vict. c. 1. -	An Act to amend the Act for limiting the time of service in the Royal Marine forces.	Section one, from "and the forms of questions" to the end of the section.
26 & 27 Vict. c. 65.	The Volunteer Act, 1863 -	Section three, from "for the purposes of this Act" down to "usages of Her Majesty's forces," so far as relates to such portion of the permanent staff as are included in any corps of the regular forces within the meaning of this Act, and from "if any non-commissioned officer of the volunteer permanent staff" to the end of the section; section five, from "officers of the volunteer force when not on actual" down to "Articles of War;" section nine; section fourteen, from "for the purposes of this Act" down to "any regulations under this Act" so far as relates to such portion of the permanent staff as are included in any corps of the regular forces within the meaning of this Act; in section eighteen, the words "and to be billeted and quartered" and from "and to have relief" down to "or to Scotland;" sections twenty-two and twenty-three; section forty-nine, from "the term Mutiny Act" down to "Act for the time being in force," and from "if at any time Her Majesty thinks fit" down to "such men respectively," so far as relates to such portion of the permanent staff as are included in any corps of the regular forces within the meaning of this Act; and the forms of warrant (ii) and (iii) in the schedule.
30 & 31 Vict. c. 34.	An Act for limiting the period of enlistment in Her Majesty's army.	The whole Act.
30 & 31 Vict. c. 110.	The Reserve Force Act, 1867 -	Sections four, six, seven, and eight; section ten from "and the said force" to the end of the section; section twelve; and section thirteen from "or who having" down to "service as aforesaid."
30 & 31 Vict. c. 111.	The Militia Reserve Act, 1867 -	Section two, from "Mutiny Act means" to the end of the section; section six; section nine and section eleven from "may have volunteered" down to "enlisted under this Act"; and from "and offences committed by such men," to the end of the section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
33 & 34 Vict. c. 67.	The Army Enlistment Act, 1870	The whole Act except section fourteen, section fifteen down to "Reserve Act, 1867," section twenty, and section twenty-two.
34 & 35 Vict. c. 86.	The Regulation of the Forces Act, 1871.	Sections nine and fifteen.
38 & 39 Vict. c. 69.	The Militia Voluntary Enlistment Act, 1875.	Section two, from "Mutiny Act means" to "authority of the Mutiny Act;" section twenty; section twenty-two; section twenty-nine; section thirty-seven from "and officers either of the militia" to the end of the section; section forty-two; sections fifty-six to sixty; sections sixty-four to seventy-one; sections seventy-three to seventy-five; and section seventy-seven.
39 & 40 Vict. c. 36.	The Customs Consolidation Act, 1876.	Section nine from "nor shall any soldiers" to the end of the section.
41 & 42 Vict. c. 10.	An Act for punishing mutiny and desertion and for the better payment of the army and their quarters.	The whole Act except sections forty-two, forty-seven, and forty-eight, so far as they relate to the reserve forces and are not inconsistent with the Army Act, 1879, and except section forty-four from "Provided that a recruit" to the end of the section; sections fifty-seven, fifty-eight, eighty, one hundred and five, and one hundred and nine, and the first form of oath and the first form of certificate in the schedule, so far as they relate to any of the auxiliary forces and are not inconsistent with the Army Act, 1879.
41 & 42 Vict. c. 11.	An Act for the Regulation of Her Majesty's Royal Marines while on shore.	The whole Act.
42 & 43 Vict. c. 32.	The Army Discipline and Regulation (Commencement) Act, 1879.	Section four from "the expiration of" the Army Mutiny Act shall not" down to "relating to the same matters."
42 & 43 Vict. c. 33.	The Army Discipline and Regulation Act, 1879.	Section twenty, from "or allows to" escape" down to "keep or guard" (being sub-section two), section twenty-three, in section twenty-eight, the words "whether present" as a witness or bystander, or in "any capacity other than as a prisoner"; section forty-seven, from "such court-martial shall con-

Year and Chapter.	Title or Short Title.	Extent of Repeal.
42 & 43 Vict. c. 33. —cont.	The Army Discipline and Regulation Act, 1879.	<p>sist." down to "not less than three officers" (being sub-section (2)); section forty-eight, from "a general court-martial shall consist," down to "consist of three officers" (being sub-sections (3) and (4)); in section fifty-four, part of sub-section five, namely, "and where a court-martial is held in a colony" down to "above-mentioned" at the end of the sub-section; in sub-section (2) of section eighty-three the words "or while such soldier is on service beyond the seas" so far as they relate to men enlisted after the commencement of this Act; in section eighty-six, from "a soldier of the regular forces who is discharged" to the end of the section; in section one hundred and twenty, the words "by warrant of Her Majesty"; section one hundred and thirty-five; section one hundred and fifty-six from "a record made in one of the regimental books" down to "stated by such record" (being sub-section (g)); section one hundred and sixty-nine, from "Provided that it shall be the duty of the commanding officer," in sub-section (8) down to "in which he shall be subject to military law," being the end of that sub-section; section one hundred and seventy-one, from "and if any such officers or men of the royal marines," in sub-section (8) down to "subject to this Act accordingly," being the end of that sub-section; section one hundred and seventy-three, so far as relates to pensioners; in section one hundred and eighty-one, the definition of "corps" from "as respects cavalry" down to "included in a territorial brigade and" and from "a regiment of militia" to "volunteers and," and the last part of the section from "for the purpose of deducting" to the end of the section.</p>

CHAP. 58.

Army Act, 1881.

ABSTRACT OF THE ENACTMENTS.

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SCHEDULES.

An Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the same. (27th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as the Army Act, 1881.

2. This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force or continuing the same.

3. This Act is divided into five parts, relating to the following subject-matters; that is to say,

Part I., discipline:

Part II., enlistment:

Part III., billeting and impressment of carriages:

Part IV., general provisions:

Part V., application of military law, saving provisions, and definitions.

PART I.

DISCIPLINE.

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Offences in respect of Military Service.

4. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend; or

(2.) Shamefully casts away his arms, ammunition, or tools in the presence of the enemy; or

(3.) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy; or

(4.) Assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner; or

(5.) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy; or

(6.) Knowingly does when on active service any act calculated to imperil the success of Her Majesty's forces or any part thereof; or

(7.) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,

shall on conviction by court-martial be liable to suffer death, or such less punishment as in this Act mentioned.

5. Every person subject to military law who on active service commits any of the following offences; that is to say,

(1.) Without orders from his superior officer leaves the ranks, in order to secure prisoners or horses, or on pretence of taking wounded men to the rear; or

(2.) Without orders from his superior officer wilfully destroys or damages any property; or

(3.) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to re-join Her Majesty's Service when able to rejoin the same; or

(4.) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy; or

(5.) By word of mouth or in writing or by signals or otherwise spreads reports calculated to create unnecessary alarm or despondency; or

(6.) In action, or previously to going into action, uses words calculated to create alarm or despondency,

shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

6. (1.) Every person subject to military law who commits any of the following offences that is to say,

(a.) Leaves his commanding officer to go in search of plunder; or

(b.) Without orders from his superior officer, leaves his guard, picquet, patrol, or post; or

(c.) Forces a safeguard; or

(d.) Forces or strikes a soldier when acting as sentinel; or

(e.) Impedes the provost marshal or any assistant provost marshal or any officer or

non-commissioned officer or other person legally exercising authority under or on behalf of the provost marshal, or, when called on, refuses to assist in the execution of his duty the provost marshal, assistant provost marshal, or any such officer, non-commissioned officer, or other person ; or

- (f.) Does violence to any person bringing provisions or supplies to the forces ; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving ; or
- (g.) Breaks into any house or other place in search of plunder ; or
- (h.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field, or elsewhere ; or
- (i.) Treacherously makes known the parole, watchword, or countersign to any person not entitled to receive it ; or treacherously gives a parole, watchword, or countersign different from what he received ; or
- (j.) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders issued in that respect ; or
- (k.) Being a soldier acting as sentinel, commits any of the following offences ; that is to say,
 - (i.) sleeps or is drunk on his post ; or
 - (ii.) leaves his post before he is regularly relieved,

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned ; and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) Every person subject to military law who commits any of the following offences ; that is to say,

- (a.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field, or elsewhere ; or
- (b.) Makes known the parole, watchword, or countersign to any person not entitled to receive it ; or, without good and sufficient cause, gives a parole, watchword, or

countersign different from what he received,

shall on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Mutiny and Insubordination.

7. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) Causes or conspires with any other persons to cause any mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy ; or
- (2.) Endeavours to seduce any person in Her Majesty's regular, reserve, or auxiliary forces, or Navy, from allegiance to Her Majesty, or to persuade any person in Her Majesty's regular, reserve, or auxiliary forces, or Navy, to join in any mutiny or sedition ; or
- (3.) Joins in, or being present does not use his utmost endeavours to suppress, any mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy ; or
- (4.) Coming to the knowledge of any actual or intended mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy, does not without delay inform his commanding officer of the same,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

8. 1. Every person subject to military law who commits any of the following offences ; that is to say,

Strikes or uses or offers any violence to his superior officer, being in the execution of his office, shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned ; and

2. Every person subject to military law who commits any of the following offences ; that is to say,

Strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer,

shall on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned ; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

9. 1. Every person subject to military law who commits the following offence; that is to say,

Disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office, whether the same is given orally, or in writing, or by signal, or otherwise, shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned; and

2. Every person subject to military law who commits the following offence; that is to say,

Disobeys any lawful command given by his superior officer, shall, on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

10. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes or uses or offers violence to any such officer; or

(2.) Strikes or uses or offers violence to any person, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer; or

(3.) Resists an escort whose duty it is to apprehend him or to have him in charge; or

(4.) Being a soldier breaks out of barracks, camp, or quarters,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

11. Every person subject to military law who commits the following offence; that is to say, neglects to obey any general or garrison or other orders,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Provided that the expression "general orders" in this section shall not include Her Majesty's regulations and orders for the army or any similar order in the nature of a regulation published for the general information and guidance of the army.

Desertion, Fraudulent Enlistment, and Absence without Leave.

12. 1. Every person subject to military law who commits any of the following offences; that is to say,

(a.) Deserts or attempts to desert Her Majesty's service; or

(b.) Persuades, endeavours to persuade, procures or attempts to procure, any person subject to military law to desert from Her Majesty's service,

shall, on conviction by court-martial—

if he committed such offence when on active service or under orders for active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned; and for the second or any subsequent offence, to suffer penal servitude, or such less punishment as is in this Act mentioned.

2. Where an offender has fraudulently enlisted once or oftener, he may, for the purposes of trial for the offence of deserting or attempting to desert Her Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

3. For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section.

13. 1. Every person subject to military law

who commits any of the following offences ; that is to say,

- (a.) When belonging to either the regular forces or the militia when embodied, without having first obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist, enlists in Her Majesty's regular forces, or
- (b.) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrolls himself, or enlists in the militia or in any of the reserve forces, not subject to military law, or enters the Royal Navy, shall be deemed to have been guilty of fraudulent enlistment, and shall on conviction by court-martial be liable—
 - (i.) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned ; and
 - (ii.) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.
2. Where an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs ; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly ; and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.
3. Where an offender is convicted of the offence of fraudulent enlistment then for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting or attempting to desert Her Majesty's service may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not upon his conviction for that fraudulent enlistment be reckoned as a previous offence of deserting or attempting to desert.
14. Every person subject to military law who commits any of the following offences ; that is to say,
 - (1.) Assists any person subject to military law to desert Her Majesty's service ; or
 - (2.) Being cognisant of any desertion or intended desertion of a person subject to

military law, does not forthwith give notice to his commanding officer, or take any steps in his power to cause the deserter or intending deserter to be apprehended, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

15. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) Absents himself without leave ; or
 - (2.) Fails to appear at the place of parade or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity quits the ranks ; or
 - (3.) Being a soldier, when in camp or garrison or elsewhere, is found beyond any limits fixed or in any place prohibited by any general garrison or other order, without a pass or written leave from his commanding officer ; or
 - (4.) Being a soldier, without leave from his commanding officer, or without due cause, absents himself from any school when duly ordered to attend there,
- shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Disgraceful Conduct.

16. Every officer who, being subject to military law, commits the following offence ; that is to say,
behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall on conviction by court-martial be cashiered.

17. Every person subject to military law who commits any of the following offences ; that is to say,

Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods,
shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

18. Every soldier who commits any of the following offences ; that is to say,

- (1.) Malingers, or feigns or produces disease or infirmity; or
 - (2.) Wilfully maims or injures himself or any other soldier, whether at the instance of such other soldier or not, with intent thereby to render himself or such other soldier unfit for service, or causes himself to be maimed or injured by any person, with intent thereby to render himself unfit for service; or
 - (3.) Is wilfully guilty of any misconduct, or wilfully disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates disease or infirmity, or delays its cure; or
 - (4.) Steals or embezzles or receives knowing them to be stolen or embezzled any money or goods the property of a comrade or of an officer, or any money or goods belonging to any regimental mess or band, or to any regimental institution, or any public money or goods; or
 - (5.) Is guilty of any other offence of a fraudulent nature not before in this Act particularly specified, or of any other disgraceful conduct of a cruel, indecent, or unnatural kind,
- shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Drunkenness.

19. Every person subject to military law who commits the following offence; that is to say,

The offence of drunkenness, whether on duty or not on duty, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to or in substitution for any other punishment, to pay a fine not exceeding one pound.

Offences in relation to Prisoners.

20. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) When in command of a guard, picket, patrol, or post, releases without proper authority, whether wilfully or otherwise, any prisoner committed to his charge; or
 - (2.) Wilfully or without reasonable excuse allows to escape any prisoner who is committed to his charge, or whom it is his duty to keep or guard,
- shall on conviction by court-martial be liable if he has acted wilfully to suffer penal servitude,

or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned.

21. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Unnecessarily detains a prisoner in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or
 - (2.) Having committed a person to the custody of any officer, non-commissioned officer, provost marshal, or assistant provost marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost marshal, or assistant provost marshal, into whose custody the person is committed, an account in writing signed by himself of the offence with which the person so committed is charged;
 - (3.) Being in command of a guard, does not as soon as he is relieved from his guard or duty, or, if he is not sooner relieved, within twenty-four hours after a prisoner is committed to his charge, give in writing to the officer to whom he may be ordered to report the prisoner's name and offence so far as known to him; and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account,
- shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

22. Every person subject to military law who commits the following offence; that is to say,

Being in arrest or confinement, or in prison or otherwise in lawful custody, escapes, or attempts to escape, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Offences in relation to Property.

23. Every person subject to military law

who commits any of the following offences; that is to say,

- (1.) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or
 - (2.) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of Her Majesty's forces,
- shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

24. Every soldier who commits any of the following offences; that is to say,

- (1.) Makes away with, or is concerned in making away with (whether by pawning, selling, destruction, or otherwise howsoever), his arms, ammunition, equipments, instruments, clothing, regimental necessities, or any horse of which he has charge; or
 - (2.) Loses by neglect anything before in this section mentioned; or
 - (3.) Makes away with (whether by pawning, selling, destruction, or otherwise however) any military decoration granted to him; or
 - (4.) Wilfully injures anything before in this section mentioned or any property belonging to a comrade, or to an officer, or to any regimental mess or band, or to any regimental institution, or any public property; or
 - (5.) Ill-treats any horse used in the public service,
- shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Offences in relation to False Documents and Statements.

25. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) In any report, return, muster roll, pay list, certificate, book, route, or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy—
 - (a.) Knowingly makes or is privy to the making of any false or fraudulent statement; or
 - (b.) Knowingly makes or is privy to the making of any omission with intent to defraud; or

(2.) Knowingly and with intent to defraud or to injure any person suppresses, defaces, alters, or makes away with any document which it is his duty to preserve or produce; or

(3.) Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration, shall, on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

26. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) When signing any document relating to pay, arms, ammunition, equipments, clothing, regimental necessities, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher; or
 - (2.) Refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send,
- shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned. and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

27. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Being an officer or soldier, makes a false accusation against any other officer or soldier, knowing such accusation to be false; or
- (2.) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts; or
- (3.) Being a soldier, falsely states to his commanding officer that he has been guilty of desertion or of fraudulent enlistment, or of desertion from the Navy, or has served in and been discharged from any portion of the regular forces, reserve forces or auxiliary forces, or the Navy; or
- (4.) Being a soldier, makes a wilfully false statement to any military officer or justice in respect of the prolongation of furlough, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Offences in relation to Courts-martial.

28. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Being duly summoned or ordered to attend as a witness before a court-martial, makes default in attending; or
- (2.) Refuses to take an oath or make a solemn declaration legally required by a court-martial to be taken or made; or
- (3.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or
- (4.) Refuses when a witness to answer any question to which a court-martial may legally require an answer; or
- (5.) Is guilty of contempt of a court-martial by using insulting, or threatening language, or by causing any interruption or disturbance in the proceedings of such court,

shall, on conviction by a court-martial other than the court in relation to or before whom the offence was committed be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned:

Provided that where a person subject to military law is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, that court, if they think it expedient, instead of the offender being tried by another court-martial, may by order under the hand of the president commit such offender to prison, there to be imprisoned, with or without hard labour, for a period not exceeding twenty-one days.

29. Every person subject to military law who commits the following offence; that is to say,

When examined on oath or solemn declaration before a court-martial, or any court or officer authorised by this Act to administer an oath, wilfully gives false evidence,

shall be liable on conviction by court-martial to suffer imprisonment, or such less punishment as is in this Act mentioned.

Offences in relation to Billeting.

30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting); that is to say,

- (1.) Is guilty of any ill-treatment, by violence, extortion, or making distur-

ances in billets, of the occupier of a house in which any person or horse is billeted; or

- (2.) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same; or
- (3.) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses, have been billeted, or to the making up and transmitting of an account of the money due to such person; or
- (4.) Wilfully demands billets which are not actually required for some person or horse entitled to be billeted; or
- (5.) Takes or knowingly suffers to be taken from any person any money or reward for excusing or relieving any person from his liability in respect of the billeting or quartering of officers, soldiers, or horses, or any part of such liability; or
- (6.) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty; or
- (7.) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billeted upon him in pursuance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Offences in relation to Impressment of Carriages.

31. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages); that is to say,

- (1.) Wilfully demands any carriages, animals, or vessels which are not actually required for the purposes authorised by this Act; or
- (2.) Fails to comply with the provisions of this Act relating to the impressment of

- carriages as regards the payment of sums due for carriages or as regards the weighing of the load; or
- (3.) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages to travel against the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than he is required by the said provisions to carry; or
 - (4.) Does not discharge as speedily as practicable any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages; or
 - (5.) Compels the person in charge of any such carriage, animal, or vessel, or permits him to be compelled, to take thereon any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person; or
 - (6.) Ill-treats or permits such person in charge to be ill-treated; or
 - (7.) Uses or offers any menace to or compulsion on a constable to make him provide any carriage, animal, or vessel which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, or vessels, or tending to induce him to do anything contrary to his said duty; or
 - (8.) Forces any carriage, animal, or vessel from the owner thereof,
- shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Offences in relation to Enlistment.

32. (1.) Every person having become subject to military law, who is discovered to have committed the following offence; (that is to say,)

Having been discharged with disgrace from any part of Her Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the regular forces without declaring the circumstances of his discharge, or dismissal,

shall on conviction by court-martial be liable

to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) For the purpose of this section, the expression "discharged with disgrace from any part of Her Majesty's forces" means discharged with ignominy, discharged as incorrigible and worthless, or discharged on account of conviction for felony or of a sentence of penal servitude.

33. Every person having become subject to military law who is discovered to have committed the following offence; that is to say,

To have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, shall on conviction by court-martial be liable to suffer imprisonment or such less punishment as is in this Act mentioned.

34. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Is concerned in the enlistment for service in the regular forces of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against this Act; or

(2.) Wilfully contravenes any enactments or the regulations of the service in any matter relating to the enlistment or attestation of soldiers of the regular forces, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Miscellaneous Military Offences.

35. Every person subject to military law who commits the following offence; that is to say,

Uses traitorous or disloyal words regarding the Sovereign,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

36. Every person subject to military law who commits the following offence; that is to say,

Whether serving with any of Her Majesty's forces or not, without due authority either verbally or in writing or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or

stores thereof, or any preparations for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to Her Majesty's service,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

37. Every officer or non-commissioned officer who commits any of the following offences; that is to say,

(1.) Strikes or otherwise illtreats any soldier; or

(2.) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due, shall on conviction by court-martial be liable, if an officer, to be cashiered or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment or such less punishment as is in this Act mentioned.

38. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Fights, or promotes or is concerned in or connives at fighting a duel; or

(2.) Attempts to commit suicide, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

39. Every person subject to military law who commits any of the following offences; that is to say,

On application being made to him neglects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

40. Every person subject to military law who commits any of the following offences; that is to say,

Is guilty of any act, conduct, disorder, or neglect, to the prejudice of good order and military discipline, shall on conviction by court-martial be liable,

if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Act, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction.

Offences punishable by ordinary Law.

41. Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial, and on conviction to be punished as follows; that is to say,

(1.) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned; and

(2.) If he is convicted of murder, be liable to suffer death; and

(3.) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

(4.) If he is convicted of rape, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

(5.) If he is convicted of any offence not before in this Act particularly specified which when committed in England is punishable by the law of England, be liable, whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided as follows:—

(a.) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom, and shall not be tried by court-martial for

treason, murder, manslaughter, treason-felony, or rape committed in any place within Her Majesty's dominions, other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court.

- (b.) A person subject to military law when in Her Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law.

Redress of Wrongs.

42. If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Commander-in-Chief in order to obtain justice, who is hereby required to examine into such complaint, and through a Secretary of State make his report to Her Majesty in order to receive the directions of Her Majesty thereon.

43. If any soldier thinks himself wronged in any matter by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the general or other officer commanding the district or station where the soldier is serving; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

Punishments.

44. Punishments may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—
In the case of officers, according to the scale following:

- a. Death.
- b. Penal servitude for a term not less than five years.

- c. Imprisonment, with or without hard labour, for a term not exceeding two years.
 - d. Cashingiering.
 - e. Dismissal from Her Majesty's Service.
 - f. Forfeiture in the prescribed manner of seniority of rank, either in the army or in the corps to which the offender belongs, or in both.
 - g. Reprimand, or severe reprimand.
- In the case of soldiers, according to the scale following:
- h. Death.
 - j. Penal servitude for a term not less than five years.
 - k. Imprisonment, with or without hard labour, for a term not exceeding two years.
 - l. Discharge with ignominy from Her Majesty's service.
 - m. Reduction in the case of a non-commissioned officer to a lower grade, or to the ranks.
 - n. Forfeitures, fines, and stoppages.

Provided that—

- (1.) Where in respect of any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scales than the particular punishment.
- (2.) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment.
- (3.) An officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand.
- (4.) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from Her Majesty's service.
- (5.) Where a soldier on active service is guilty of an aggravated offence of drunkenness, or of an offence of disgraceful conduct, or of any offence punishable with death or penal servitude, it shall be lawful for a court-martial to award for that offence such summary punishment other than flogging as may be directed by rules to be made from time to time by a Secretary of State; and such summary punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb, and shall not be inflicted where the confirming officer is of opinion that im-

prisonment can with due regard to the public service be carried into execution.

- (6.) The said summary punishment shall not be inflicted upon a non-commissioned officer, or upon a reduced non-commissioned officer, for any offence committed while holding the rank of non-commissioned officer.
- (7.) "An aggravated offence of drunkenness" for the purposes of this section means drunkenness committed on the march or otherwise on duty, or after the offender was warned for duty, or when by reason of the drunkenness the offender was found unfit for duty; and notwithstanding anything in this Act it shall not be incumbent on the commanding officer to deal summarily with such aggravated offence of drunkenness.
- (8.) "An offence of disgraceful conduct" for the purposes of this section means any offence specified in section eighteen of this Act.
- (9.) All rules with respect to summary punishment made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.
- (10.) For the purpose of commutation of punishment the summary punishment above mentioned shall be deemed to stand in the scale of punishments next below penal servitude.
- (11.) In addition to or without any other punishment in respect of any offence, an offender convicted by court-martial may be subject to forfeiture of any deferred pay, service towards pension, military decoration or military reward, in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1863, or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts.
- (12.) In addition to or without any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorised by this Act to be made from his ordinary pay.

ARREST AND TRIAL.

Arrest.

45. The following regulations shall be enacted with respect to persons subject to

military law when charged with offences punishable under this Act:

- (1.) Every person subject to military law when so charged may be taken into military custody: Provided, that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his commanding officer in manner prescribed; and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody:
- (2.) Military custody means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement:
- (3.) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody any officer (though he be of higher rank) engaged in a quarrel, fray, or disorder; and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm, or branch of the service:
- (4.) An officer or non-commissioned officer commanding a guard, or a provost-marshal or assistant provost-marshal, shall not refuse to receive or keep any person who is committed to his custody by any officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody to deliver at the time of such committal or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal into whose custody the person is committed, an account in writing, signed by himself, of the offence with which the person so committed is charged:
- (5.) The charge made against every person taken into military custody shall without unnecessary delay be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such persons shall be discharged from custody.

Power of Commanding Officer.

46. (1.) The commanding officer shall upon an investigation being had of a charge made

against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge if he in his discretion thinks that it ought not to be proceeded with, but where he thinks the charge ought to be proceeded with, he may take steps for bringing the offender to a court-martial, or in the case of a soldier may deal with the case summarily.

(2.) Where he deals with a case summarily, he may,—

- (a.) Award to the offender imprisonment, with or without hard labour, for any period not exceeding seven days; and
- (b.) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding ten shillings, either in addition to or without imprisonment with or without hard labour; and
- (c.) In addition to or without any other punishment, may order the offender to suffer any deduction from his ordinary pay authorised by this Act to be made by the commanding officer.

(3.) Where the charge is against a soldier for drunkenness not on duty, and it is not an aggravated offence of drunkenness within the meaning of section forty-four of this Act, the commanding officer shall deal with the case summarily unless the soldier was guilty of drunkenness after being warned for duty, or unless he has been guilty of drunkenness on not less than four occasions in the preceding twelve months, but nothing in this sub-section shall affect the jurisdiction of any court-martial.

(4.) In the case of absence without leave, the commanding officer may award imprisonment, with or without hard labour, for any period not exceeding twenty-one days.

(5.) Provided that where imprisonment is awarded for absence without leave the commanding officer shall have regard to the number of days during which the offender has been absent, and in no case shall the term of imprisonment awarded, if exceeding seven days, exceed the term of absence.

(6.) Provided that in every case where the power of summary award by a commanding officer exceeds a sentence of seven days imprisonment, the accused person may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(7.) An offender shall not be liable to be tried by court-martial for any offence which has been dealt with summarily by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or con-

victed by a competent civil court or by a court-martial.

(8.) A soldier ordered by his commanding officer to suffer imprisonment or pay a fine, or to suffer any deduction from his ordinary pay, shall, if he so request, have a right to be tried by a district court-martial instead of submitting to such imprisonment, fine, or deduction.

(9.) Nothing in this section shall prejudice the power of a commanding officer to award such minor punishments as he is for the time being authorised to award, so, however, that a minor punishment shall not be awarded for any offence for which punishment exceeding seven days is awarded.

Courts-martial.

47. (1.) Any officer authorised by or in pursuance of this Act to convene general and district courts-martial or either of them, also any commanding officer of a rank not below the rank of captain, also any officer of a rank not below the rank of captain when in command of two or more corps or portions of two or more corps, also on board a ship, a commanding officer of any rank may, without warrant and by virtue of this Act, convene a regimental court-martial for the trial of offences committed by soldiers under his command.

(2.) Such court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than one whole year.

(3.) The convening officer shall appoint the president.

(4.) The president of a regimental court-martial shall not be under the rank of captain, unless where the court-martial is held on the line of march, or on board any ship, or unless, in the opinion of the convening officer, such opinion to be expressed in the order convening the court and to be conclusive, a captain is not, with due regard to the public service, available, in any of which cases an officer of any rank may be president.

(5.) A regimental court-martial shall not try an officer, nor award the punishment of death or penal servitude, or of imprisonment in excess of forty-two days, or of discharge with ignominy; but, subject as aforesaid, and save as in this Act specially mentioned, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by a regimental court-martial.

48. The following rules are enacted with respect to general courts-martial and district courts-martial:

- (1.) A general court-martial shall be convened by Her Majesty, or some officer

deriving authority to convene a general court-martial immediately or mediately from Her Majesty:

- (2.) A district court-martial shall be convened by an officer authorised to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorised to convene general courts-martial:
- (3.) A general court-martial shall consist in the United Kingdom, India, Malta, and Gibraltar of not less than nine and elsewhere of not less than five officers, each of whom must have held a commission during not less than three whole years, and of whom not less than five must be of a rank not below that of captain:
- (4.) A district court-martial shall consist in the United Kingdom, India, Malta, and Gibraltar, of not less than five and elsewhere of not less than three officers, each of whom must have held a commission during not less than two whole years:
- (5.) The minimum number mentioned in this section for a general or a district court-martial shall be the legal minimum for that court-martial:
- (6.) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by either a general or district court-martial:
- (7.) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer.
- (8.) Sentence of death shall not be passed on any prisoner without the concurrence of two thirds at the least of the officers serving on the court-martial by which he is tried:
- (9.) The president of a court-martial, whether general or district, shall be appointed by order of the authority convening the court, but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial, and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed in the

order convening the court, and to be conclusive, a captain is not, having due regard to the public service, available.

49. (1.) Where a complaint is made to any officer in command of any detachment or portion of troops in any country beyond the seas, that an offence has been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in such country,—then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorised to convene general courts-martial, to convene a court-martial, in this Act referred to as a field general court-martial, for the trial of the person charged with such offence, provided as follows:

- (a.) A field general court-martial shall consist of not less than three officers;
- (b.) The convening officer may preside, but he shall, whenever he deems it practicable, appoint another officer as president, who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain.
- (2.) Section forty-eight of this Act shall not apply to a field general court-martial, but sentence of death shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.
- (3.) A field general court-martial may, notwithstanding the restrictions enacted by this Act in respect of the trial by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence: Provided always, that no sentence of any such court-martial shall be executed until confirmed as provided by this Act.

50. (1.) The officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps.

(2.) The officer who convened a court-martial shall not, save as is otherwise expressly provided by this Act, sit on that court-martial.

(3.) Any of the following persons, that is to say, a prosecutor or witness for the prosecution of any prisoner, or the commanding officer of the prisoner within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges on which a

prisoner is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such prisoner, nor shall he act as judge advocate at such court-martial.

51. (1.) A prisoner about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the prisoner makes no reasonable objection.

(2.) Every objection made by a prisoner to any officer shall be submitted to the other officers appointed to form the court.

(3.) If the objection is to the president, such objection, if allowed by one-third or more of the other officers appointed to form the court, shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4.) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the prisoner to object.

(5.) If the objection is to a member other than the president, and is allowed by one half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the prisoner to object.

(6.) In order to enable a prisoner to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the prisoner on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

52. (1.) An oath shall be administered by the prescribed person to every member of every court-martial before the commencement of the trial in the following form; that is to say,

' You do swear, that you will well and truly try the prisoner [or prisoners] before the court according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not on any account at any time whatsoever disclose or discover the vote or

' opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD.'

(2.) An oath in the prescribed form or forms shall be administered by the prescribed person to the judge advocate or person officiating as judge advocate (if any), and also to every officer in attendance on a court-martial for the purpose of instruction (if any), and also to every shorthand writer (if any) in attendance on the court-martial.

(3.) Every witness before a court-martial shall be examined on oath, which the president or other prescribed person shall administer in the prescribed form.

(4.) If a person by this Act required either as a member of, or person in attendance on, or witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court if satisfied of the sincerity of the objection, or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn to make a solemn declaration in the prescribed form, and for the purposes of this Act such solemn declaration shall be deemed to be an oath.

53. (1.) If a court-martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

(2.) If after the commencement of the trial the president dies or is otherwise unable to attend, and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank the court shall be dissolved.

(3.) If, on account of the illness of the prisoner before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(4.) Where a court-martial is dissolved under the foregoing provisions of this section the prisoner may be tried again.

(5.) The president of any court-martial may, on any deliberation amongst the members cause the court to be cleared of all other persons.

(6.) The court may adjourn from time to time.

(7.) The court may also, where necessary, view any place.

(8.) In the case of an equality of votes on the finding the prisoner shall be deemed to be acquitted. In the case of an equality of votes on the sentence, or any question arising after

the commencement of the trial except the finding, the president shall have a second or casting vote.

(9.) When a court-martial recommend a prisoner to mercy, such recommendation shall be attached to and form part of the proceedings of the court, and shall be promulgated and communicated to the prisoner, together with the finding and sentence.

54. (1.) The following authorities shall have power to confirm the findings and sentences of courts-martial; that is to say,

(a.) In the case of a regimental court-martial, the convening officer or officer having authority to convene such a court-martial at the date of the submission of the finding and sentence thereof:

(b.) In the case of a general court-martial, Her Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from Her Majesty:

(c.) In the case of a district court-martial, an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorised to convene general courts-martial:

(d.) In the case of a field general court-martial, an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part.

(2.) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision once, but not more than once, and it shall not be lawful for the court on any revision to receive any additional evidence; and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also. In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded.

(3.) The finding of acquittal, whether on all or some of the offences with which the prisoner is charged, shall not require confirmation or be subject to be revised, and if it relates to the whole of the offences shall be pronounced at once in open court, and the prisoner shall be discharged.

(4.) A member of a court-martial shall not have authority to confirm the finding or

sentence of that court-martial, and where a member of a court-martial becomes confirming officer he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority; and where a court-martial is held in a colony, and there is no such superior authority in that colony, the governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such superior authority as above mentioned.

(5.) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation wholly or partly, and refer such finding and sentence or the part not confirmed to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purposes of this Act be deemed to be in that instance and to the extent of such reference the confirming authority.

(6.) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed by an authority authorised to confirm the same.

(7.) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service, be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the governor of the colony.

(8.) Sentence of death when passed in India in respect of the offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General, or if the offender was tried within the limits of any presidency, by the Governor-General or the governor of that presidency.

(9.) When a person subject to military law is convicted of manslaughter or rape, or any other civil offence under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India by the Governor-General, or if the offender has been tried within the limits of any presidency, by the Governor-General or by the governor of the presidency, or if he has

been tried in a colony, by the governor of the colony.

55. (1.) Where a person subject to military law and being on active service with any body of forces is charged with an offence, a summary court-martial may be convened and shall have jurisdiction to try such offence, if the officer convening the court is of opinion that an ordinary court-martial cannot, having due regard to the public service, be convened to try such offence.

(2.) A summary court-martial shall be convened and constituted, and the members and witnesses sworn, and its proceedings conducted, and its finding and sentence confirmed in such manner as may be provided by this section and rules from time to time made in pursuance of this Act; and sections fifty to fifty-four (both inclusive) of this Act, shall not apply to such court-martial provided that,—

- (a.) A summary court-martial shall consist of not less than three officers, unless the officer convening the same is of opinion that three officers are not available, having due regard to the public service, in which case the court-martial may consist of two officers; and
- (b.) Where a summary court-martial consists of less than three officers the sentence shall not exceed such summary punishment as is allowed by this Act, or imprisonment; and
- (c.) A sentence of death or penal servitude awarded by a summary court-martial shall not be carried into effect unless and until it has been confirmed by the general or field officer commanding the force with which the prisoner is present at the date of his sentence.

56. (1.) A prisoner charged before a court-martial with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property.

(2.) A prisoner charged before a court-martial with embezzlement may be found guilty of stealing or fraudulently misapplying money or property.

(3.) A prisoner charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4.) A prisoner charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(5.) A prisoner charged before a court-martial with any other offence under this Act may, on failure of proof of an offence being committed under circumstances involving a

higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.

EXECUTION OF SENTENCE.

57. (1.) The confirming authority may, when confirming the sentence of any court-martial, mitigate or remit the punishment thereby awarded, or commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial. The confirming authority may also suspend for such time as seems expedient the execution of a sentence.

(2.) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate or remit the punishment thereby awarded, or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial; that is to say,

- (a.) As respects persons undergoing sentence in any place whatever, Her Majesty or the Commander-in-Chief or the officer commanding the district or station where the prisoner subject to such punishment may for the time be, or any prescribed officer; and
- (b.) As respects persons undergoing sentences in India, the Commander-in-Chief of the forces in India, also as respects persons undergoing sentences in any presidency, the Commander-in-Chief of the forces in that presidency; and
- (c.) As respects persons undergoing sentences in any colony, the officer commanding the forces in that colony; and
- (d.) As respects persons undergoing sentences in any place not in the United Kingdom, India, or a colony, the officer commanding the forces in such place:

3. Provided that the power given by this section shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorised by such confirming authority or other superior military authority to exercise such power.

4. An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment.

5. The provisions of this Act with respect to an original sentence of penal servitude or imprisonment shall apply to a sentence of penal servitude or imprisonment imposed by way of commutation.

58. When a person subject to military law is convicted by a court-martial, whether in the United Kingdom or elsewhere, either within or without Her Majesty's dominions, and is sentenced to penal servitude, such conviction and sentence shall be of the same effect as if such person (in this Act referred to as a military convict) had been convicted in the United Kingdom of an offence punishable by penal servitude and sentenced to penal servitude by a competent civil court, and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly.

59. (1.) Where a sentence of penal servitude is passed by a court-martial in the United Kingdom, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law, and until so transferred shall be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) At any time before his arrival at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(4.) Any one or more of the following officers shall be the committing authority for the purposes of this section, namely,—

- (a.) The Commander-in-Chief,
- (b.) The Adjutant-General,
- (c.) The commanding officer of the military convict, and
- (d.) Any other prescribed officer.

(5.) Any one of the following officers shall be the discharging authority for the purposes of this section, namely,—

- (a.) The Commander-in-Chief,
- (b.) The Adjutant-General, and
- (c.) Any other prescribed officer.

60. (1.) Where a sentence of penal servitude is passed by a court-martial in India or any colony, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) The military convict during the period which intervenes between the passing of his sentence and his arrival at the penal servitude

prison (in this section referred to as the term of his intermediate custody) shall be deemed to be in legal custody.

(4.) The military convict during his term of intermediate custody may be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require, and may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his detention and removal.

(5.) "Civil custody," for the purposes of this section means custody in any authorised prison; nevertheless, where it is not practicable to place the military convict in an authorised prison, he may, by way of civil custody, be confined temporarily in any other prison with the assent of the authority having jurisdiction over that prison.

(6.) The military convict whilst in any prison in which he may legally be placed may be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

(7.) An order of the removing authority (hereafter in this section mentioned) shall be a sufficient authority for the transfer of the military convict from military custody to civil custody and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient during the term of his intermediate custody.

(8.) The removing authority during the term of the intermediate custody of the military convict may from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness or for trial or otherwise, and an order of such authority shall be a sufficient warrant for the delivering him into military custody, and detaining him in custody until he can be returned, and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

(9.) Any directions of the removing authority relating to the mode in which the military convict is to be dealt with during the term of his intermediate custody may be contained in the same order or in several orders; and if the orders are more than one, they may be by different officers and at different times.

(10.) At any time before the military convict arrives at a penal servitude prison the discharging authority thereafter in this section

mentioned) may by order discharge the military convict.

(11.) Any one or more of the following officers shall be the committing authority for the purposes of this section; that is to say,

(a.) In India—

- (i.) The Commander-in-Chief of the forces in India;
- (ii.) The Commander-in-Chief of the forces in any presidency in India;
- (iii.) The Adjutant-General in India;
- (iv.) The Adjutant-General in any presidency in India: and

(b.) In a colony, the officer commanding the forces in that colony; and

(c.) In any case, whether in India or in a colony, the prescribed officer.

(12.) Any one or more of the following officers shall be the removing authority for the purposes of this section; that is to say,

(a.) Any officer in this section named as the committing authority; also

(b.) The officer commanding the military district or station where the military convict may for the time being be; also

(c.) Any other prescribed officer.

(13.) Any of the following officers shall be the discharging authority for the purposes of this section; that is to say,

(a.) The officer who confirmed the sentence; also

(b.) Any officer in this section named as the committing authority; also

(c.) Any other prescribed officer.

61. (1.) Where a sentence of penal servitude is passed by a court-martial in any foreign country, the military convict on whom such sentence has been passed shall as soon as practicable be transferred to a penal servitude prison for the purpose of undergoing his sentence according to law, and, until so transferred, may be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for the transfer of the military convict to a penal servitude prison.

(3.) If at any time before his arrival in the United Kingdom the military convict is brought into India or any colony, he may be dealt with by the competent military authority in India or such colony in the same manner in all respects as if he had been there sentenced by court-martial to penal servitude.

(4.) The military convict may at any time before he arrives at any place in the United Kingdom, India, or any colony, be discharged by the discharging authority (hereafter in this section mentioned) having jurisdiction in any place where the military convict may for the time being be.

(5.) Any one or more of the following officers shall be the committing authority for the purposes of this section; that is to say,

(a.) The officer commanding the army or force with which the military convict was serving at the time of his being sentenced;

(b.) The officer who confirmed the sentence of the court;

(c.) Any other prescribed officer.

(6.) Any committing authority under this section shall also be the discharging authority for the purposes of this section.

62. (1.) A penal servitude prison for the purposes of the provisions of this Act relating to penal servitude means any prison or place in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily.

(2.) An "authorised prison" for the purposes of the provisions of this Act relating to penal servitude means any prison in India or any colony which the Governor-General of India or the governor of such colony may, with the concurrence of a Secretary of State, have appointed as a prison in which military convicts may, during the period of their intermediate custody, be confined.

(3.) After a military convict has arrived at the penal servitude prison to undergo his sentence, he shall be dealt with in the like manner as an ordinary civil prisoner under sentence of penal servitude.

63. (1.) Where a sentence of imprisonment is passed by court-martial or a commanding officer, the person on whom such sentence has been passed (in the provisions of this Act relating to imprisonment referred to as a military prisoner) shall undergo the term of his imprisonment either in military custody or in a public prison, or partly in one way and partly in the other.

(2.) The order of the committing authority hereafter mentioned shall be a sufficient warrant for the transfer of a military prisoner to a public prison.

(3.) A military prisoner while in a public prison shall be confined, kept to hard labour, and otherwise dealt with in the like manner as an ordinary prisoner under a like sentence of imprisonment.

(4.) A military prisoner during his conveyance from place to place, or when on board ship or otherwise, may be subjected to such restraint as is necessary for his detention and removal.

(5.) The discharging authority hereafter mentioned may, at any time during the period of a military prisoner undergoing his imprisonment, by order discharge the prisoner.

(6.) The committing authority or any other prescribed authority may at any time by order remove a military prisoner from one public prison to another, so that he be not removed from a prison in the United Kingdom to a prison elsewhere.

(7.) The removing authority hereafter mentioned may, at any time during the period of the military prisoner undergoing his sentence in a public prison, from time to time by order, provide for his being brought before a court-martial, or any civil court, either as a witness, or for trial or otherwise, and an order of such authority shall be a sufficient warrant for delivering him into military custody and detaining him in custody until he can be returned and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

64. Where a sentence of imprisonment is passed or is being undergone in the United Kingdom, then for the purposes of the provisions of this Act relating to imprisonment—

(1.) The expression "public prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined:

(2.) Any one or more of the following officers shall be the committing authority:

- (a.) The Commander-in-Chief;
- (b.) The Adjutant-General;
- (c.) The officer who confirmed the sentence;
- (d.) The commanding officer of the military prisoner; and
- (e.) Any other prescribed officer:

(3.) Any one of the following officers shall be the discharging authority:

- (a.) The Commander-in-Chief;
- (b.) The Adjutant-General;
- (c.) The officer commanding the military district in which the prisoner may be;
- (d.) The officer who confirmed the sentence;
- (e.) Any other prescribed officer; also,
- (f.) Where the sentence was passed by the commanding officer, the commanding officer:

(4.) Any one or more of the following officers shall be the removing authority:

- (a.) The Commander-in-Chief;
- (b.) The Adjutant-General;
- (c.) The officer commanding the military district in which the prisoner may be;
- (d.) Any other prescribed officer; also,
- (e.) Where the sentence was passed by the commanding officer, the commanding officer.

65. Where a sentence of imprisonment is passed or being undergone in India or any colony, then, for the purposes of the provisions of this Act relating to imprisonment—

(1.) The expression "public prison" means any of the following prisons; that is to say—

- (a.) where the sentence was passed in India, any authorised prison in India;
- (b.) where the sentence was passed in a colony, any authorised prison in that colony;
- (c.) any such authorised prison in any part of Her Majesty's dominions other than that in which the sentence was passed as may be prescribed; and
- (d.) any public prison in the United Kingdom as above defined for the purpose of the provisions of this Act relating to imprisonment in the United Kingdom:

(2.) "Authorised prison" means any prison in India or any colony which the Governor-General of India or the governor of such colony, with the concurrence of the Secretary of State, may have appointed as a prison in which military prisoners may be confined:

(3.) A military prisoner may temporarily be confined in a prison not a public prison, with the assent of the authority having jurisdiction over such prison. And a military prisoner, who is to undergo his sentence in the United Kingdom until he reaches a prison in the United Kingdom, in which he is to undergo his sentence, may be kept in military custody or in civil custody, and partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody, and from civil custody to military custody, as occasion may require.

(4.) Any one or more of the following officers shall be the committing authority; that is to say,

- (a.) In India—
 - (i.) The Commander-in-Chief of the forces in India;
 - (ii.) The Commander-in-Chief of the forces in any presidency in India;
 - (iii.) The Adjutant-General in India; and
 - (iv.) The Adjutant-General in any presidency in India;
- (b.) In a colony, the officer commanding the forces in that colony; and
- (c.) In any case, whether in India or in a colony—
 - (i.) The officer who confirmed the sentence;

- (ii.) The commanding officer of the military prisoner; and
- (iii.) Any other prescribed officer :
- (5.) Any of the following officers shall be the discharging authority :
 - (a.) The officer commanding the military district or station in which the prisoner may be ;
 - (b.) Any officer in this section named as a committing authority, with this exception, that the commanding officer shall only be a discharging authority where the sentence was passed by a commanding officer ; and
 - (c.) Any other prescribed officer :
- (6.) Any one or more of the following officers shall be the removing authority :
 - (a.) Any officer in this section named as a committing authority ;
 - (b.) The officer commanding the military district or station where the prisoner may be, and
 - (c.) Any other prescribed officer.

66. Where a sentence of imprisonment is passed by a court-martial or commanding officer in any foreign country, then if and as soon as the military prisoner on whom such sentence has been passed is brought into the United Kingdom or India, or any colony, the provisions of this Act shall apply in the same manner in all respects as if the sentence of imprisonment had been passed in the United Kingdom, India, or any colony, as the case may be, with this addition, that the officer commanding the army or force to which the military prisoner belonged at the time of his being sentenced shall also be deemed to be a committing authority.

67. (1.) The competent military authority (hereafter in this section mentioned) may give directions for the delivery into military custody of any military prisoner for the time being undergoing his sentence of imprisonment, and the removal of such prisoner, whether with his corps or separately, to any place beyond the seas where the corps, or any part thereof, to which for the time being he belongs, is serving or under orders to serve.

(2.) The directions of such competent military authority, or an order of the removing authority issued in pursuance of such directions, shall be sufficient authority for the removal of such prisoner from the prison in which he is confined, and for his conveyance in military custody to any place designated, and for his intermediate custody during such removal and conveyance.

(3.) The competent military authority may further give directions for the discharge of

the prisoner either conditionally or unconditionally at any time while he is in military custody under this section.

(4.) For the purposes of this section any one or more of the following officers shall be the competent military authority :

- (a.) In the United Kingdom—
 - (i.) The Commander-in-Chief ;
 - (ii.) The Adjutant-General ; and
 - (iii.) Any other prescribed officer :
- (b.) In India—
 - (i.) The Commander-in-Chief of the forces in India ;
 - (ii.) The Commander-in-Chief of the forces in any presidency in India ;
 - (iii.) The Adjutant-General in India ; and
 - (iv.) The Adjutant-General in any presidency in India ;
- (c.) In a colony, the officer commanding the forces in that colony ; and
- (d.) In any case, whether in India or in a colony, the prescribed officer.

68. (1.) The term of penal servitude or imprisonment to which a person is sentenced by a court-martial, whether the sentence has been revised or not, and whether the prisoner is already undergoing sentence or not, shall be reckoned to commence on the day on which the original sentence and proceedings were signed by the president of the court-martial.

(2.) An offender under this Act shall not be subject to imprisonment for more than two consecutive years, whether under one or more sentences.

MISCELLANEOUS.

Articles of War and Rules of Procedure.

69. It shall be lawful for Her Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever : Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act.

70. (1.) Subject to the provisions of this Act Her Majesty may, by rules to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the

following matters or any of them; that is to say.

- (a.) The assembly and procedure of courts of inquiry;
 - (b.) The convening and constituting of courts-martial;
 - (c.) The adjournment, dissolution, and sittings of courts-martial;
 - (d.) The procedure to be observed in trials by court-martial;
 - (e.) The confirmation and revision of the findings and sentences of courts-martial;
 - (f.) The carrying into effect sentences of courts-martial;
 - (g.) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, or imprisonment;
 - (h.) Any matter in this Act directed to be prescribed;
 - (i.) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law:
- (2.) Provided always, that no such rule shall contain anything contrary to or inconsistent with the provisions of this Act.
- (3.) All rules made in pursuance of this section shall be judicially noticed.
- (4.) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

Command.

71. (1.) For the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to Her Majesty's forces, it is hereby declared that Her Majesty may, in such manner as to Her Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over Her Majesty's forces, or any part thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised; provided that command shall not be given to any person over a person superior in rank to himself.

(2.) Nothing in this section shall be deemed to be in derogation of any power otherwise vested in Her Majesty.

Inquiry as to and Confession of Desertion.

72. (1.) When any soldier has been absent without leave from his duty for a period of

twenty-one days, a court of inquiry may as soon as practicable be assembled, and inquire in the prescribed manner on oath or solemn declaration (which such court is hereby authorised to administer) respecting the fact of such absence, and the deficiency (if any) in the arms, ammunition, equipments, instruments, regimental necessaries, or clothing of the soldier, and if satisfied of the fact of such soldier having absented himself without leave or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the absent soldier shall enter in the regimental books a record of the declaration of such court.

(2.) If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction by court-martial for desertion.

73. (1.) Where a soldier signs a confession that he has been guilty of desertion or of fraudulent enlistment, a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures and the same deductions from pay (if any) as a court-martial could award for the said offence, or as are consequential upon conviction by a court-martial for the said offence, except such of them as may be mentioned in the order.

(2.) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession.

(3.) The competent military authority for the purposes of this section means the Commander-in-Chief or Adjutant-General, or, in the case of India, the Commander-in-Chief of the forces in India, or the Commander-in-Chief of the forces of any presidency in India, and in the case of a colony and elsewhere the general or other officer commanding the forces, subject in the case of India, or a colony, or elsewhere, to any directions given by the Commander-in-Chief.

Provost Marshal.

74. (1.) For the prompt repression of all offences which may be committed abroad, provost marshals with assistants may from time to time be appointed by the general order of

the general officer commanding a body of forces.

(2.) A provost marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences and may also carry into execution any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority.

Restitution of Stolen Property.

75. (1.) Where a person has been convicted by court-martial of having stolen, embezzled, received, knowing it to be stolen, or otherwise unlawfully obtained, any property, and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such court-martial or the Commander-in-Chief, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(2.) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or Commander-in-Chief to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3.) Moreover where it appears to the confirming authority or Commander-in-Chief from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or Commander-in-Chief may, on the application of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the said sale or pawning shall be paid to the said person purchasing or taking in pawn.

(4.) An order under this section shall not bar the right of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.

PART II.

ENLISTMENT.

Period of Service.

76. A person may be enlisted to serve Her Majesty as a soldier of the regular forces for a

period of twelve years, or for such less period as may be from time to time fixed by Her Majesty, but not for any longer period, and the period for which a person enlists is in this Act referred to as the term of his original enlistment.

77. The original enlistment of a person under this Act shall be as follows, either—

(1.) For the whole of the term of his original enlistment in army service; or

(2.) For such portion of the term of his original enlistment as may be from time to time fixed by a Secretary of State, and specified in the attestation paper, in army service, and for the residue of the said term in the reserve.

78. (1.) A Secretary of State may from time to time, by general or special regulations, vary the conditions of service, so as to permit a soldier of the regular forces in army service, with his assent, either—

(a.) To enter the reserve at once for the residue unexpired of the term of his original enlistment; or

(b.) To extend his army service for all or any part of the residue unexpired of such term; or

(c.) To extend the term of his original enlistment up to the period of twelve years.

(2.) A Secretary of State may from time to time, by general or special regulations, vary the conditions of service so as to permit a man in the reserve, with his assent, to re-enter upon army service for all or any part of the residue unexpired of the term of his original enlistment, or for any period of time not exceeding twelve years in the whole from the date of his original enlistment.

79. In reckoning the service of a soldier of the regular forces for the purpose of discharge or of transfer to the reserve—

(1.) The service shall begin to reckon from the date of his attestation; but

(2.) Where a soldier of the regular forces has been guilty of any of the following offences:

(a.) Desertion from Her Majesty's service, or

(b.) Fraudulent enlistment,

then either upon his conviction by court-martial of the offence, or (if, having confessed the offence, he is liable to be tried) upon his trial being dispensed with by order of the competent military authority, the whole of his prior service shall be forfeited, and he shall be liable to serve as a soldier of the regular forces for the

term of his original enlistment, reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been originally attested at that date:

Provided that a Secretary of State may restore all or any part of the service forfeited under this section to any soldier who may perform good and faithful service, or may otherwise be deemed by such Secretary of State to merit such restoration of service, or may be recommended for such restoration of service by a court-martial.

Proceedings for Enlistment.

80. (1.) Every person authorised to enlist recruits in the regular forces (in this Act referred to as the "recruiter") shall give to every person offering to enlist a notice in the form for the time being authorised by a Secretary of State, stating the general requirements of attestation and the general conditions of the contract to be entered into by the recruit, and directing such person to appear before a justice of the peace at the time and place therein mentioned.

(2.) Upon the appearance before a justice of the peace of a person offering to enlist, the justice shall ask him whether he assents to be enlisted, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor.

(3.) If he does not appear before a justice, or on appearing does not assent to be enlisted, no further proceedings shall be taken.

(4.) If he assents to be enlisted—

(a.) The justice, after cautioning such person that if he makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the attestation paper for the time being authorised by a Secretary of State, and shall take care that such person understands each question so read, and after ascertaining that the answer of such person to each question has been duly recorded opposite the same in the attestation paper, shall require him to make and sign the declaration as to the truth of those answers set forth in the said paper, and shall then administer to him the oath of allegiance contained in the said paper:

(b.) Upon signing the declaration and taking the oath, such person shall be deemed to be enlisted as a soldier of Her Majesty's regular forces:

(c.) The justice shall attest by his signature, in manner required by the said paper, the fulfilment of the requirements as to at-

testing a recruit, and shall deliver the attestation paper, duly dated, to the recruiter:

(d.) The fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice:

(e.) The officer who finally approves of a recruit for service shall, at his request, furnish him with a certified copy of his attestation paper.

(5.) The date at which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of the attestation of such recruit.

(6.) The competent military authority, if satisfied that there is any error in the attestation paper of a recruit, may cause the recruit to attend before some justice of the peace, and that justice, if satisfied that such error exists, and is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper as amended shall thereupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper.

81. If a recruit within three months after the date of his attestation pays for the use of Her Majesty a sum not exceeding ten pounds, he shall be discharged with all convenient speed, unless he claims such discharge during a period when soldiers in army service who otherwise would be transferred to the reserve are required by a proclamation of Her Majesty in pursuance of this Act to continue in army service, in which case he may be retained in Her Majesty's service during that period, and at the termination thereof shall, if he so require it, on the payment then of the said sum, be discharged.

Appointment to Corps and Transfers.

82. (1.) Recruits may, in pursuance of any general or special regulations from time to time made by a Secretary of State, be enlisted for service in particular corps of the regular forces, but save as is provided by such regulations, if any, recruits shall be enlisted for general service.

(2.) The competent military authority shall as soon as practicable appoint a recruit, if enlisted for service in a particular corps, to that corps, and if enlisted for general service, to some corps of the regular forces.

83. A soldier of the regular forces, whether enlisted for general service or not, when once appointed to a corps, shall serve in that corps for the period of his army service, whether

during the term of his original enlistment or during the period of such re-engagement as is in this Act mentioned, unless transferred under the following provisions:

(1.) A soldier of the regular forces enlisted for general service may within three months after the date of his attestation be transferred to any corps of the regular forces of the same arm or branch of the service by order of the competent military authority.

(2.) A soldier of the regular forces may at any time with his own consent be transferred by order of the competent military authority to any corps of the regular forces.

(3.) Where a soldier of the regular forces is in pursuance of any of the foregoing provisions transferred to a corps in an arm or branch different from that in which he was previously serving, the competent military authority may by order vary the conditions of his service so as to correspond with the general conditions of service in the arm or branch to which he is transferred.

(4.) A soldier of the regular forces in any branch of the service may be transferred by order of the competent military authority to any corps of the same branch which is serving in the United Kingdom in either of the following cases:

(a.) When he has been invalided from service beyond the seas; or

(b.) When, in the case of his corps or the part thereof in which he is serving being ordered on service beyond the seas, he is either unfit for such service by reason of his health, or is within two years from the end either of the period of his army service in the term of his original enlistment, or of such re-engagement as is in this Act mentioned.

(5.) Where a soldier of the regular forces in any branch of the service, who was enlisted to serve part of the term of his original enlistment in the reserve, and has not extended his army service for the whole of that time, is on service beyond the seas, and at the time of his corps or the part thereof in which he is serving being ordered to another station or to return home, has more than two years of his army service in the term of his original enlistment unexpired, he may be transferred by order of the competent military authority to any corps of the same branch which or a part of which is on service beyond the seas.

(6.) Where a soldier of the regular forces has been transferred to serve, either as a warrant officer not holding an honorary commission, or in the corps of armourer sergeants, or in the army hospital corps, or in the army service corps, or on the staff, or in the corps of mounted military police, or in any corps

not being a corps of infantry, cavalry, artillery, or engineers, he may by order of the competent military authority, either during the term of his original enlistment or during the period of his re-engagement, be removed from such service and transferred to any corps of the regular forces serving in the United Kingdom, or to any corps of the regular forces serving on the station beyond the seas on which he is serving at the time of his removal, or to the corps of the regular forces in which he was serving prior to such first-mentioned transfer either in the rank he holds at the time of his removal or any lower rank.

(7.) Where a soldier of the regular forces—

(a.) Has been guilty of the offence of desertion from Her Majesty's service or of fraudulent enlistment, and has either been convicted of the same by a court-martial, or, having confessed the offence, is liable to be tried, but his trial has been dispensed with by order of the competent military authority; or

(b.) Has been sentenced by a court-martial for any offence to a punishment not less than imprisonment for a term of six months,

such soldier shall be liable, in commutation wholly or partly of other punishment, to general service, and may from time to time be transferred to such corps of the regular forces as the competent military authority may from time to time order.

(8.) A soldier of the regular forces delivered into military custody or committed by a court of summary jurisdiction in any part of Her Majesty's dominions as a deserter shall be liable to be transferred by order of the competent military authority to any corps of the regular forces near to the place where he is delivered or committed, or to any other corps to which the competent military authority think it desirable to transfer him, and to serve in the corps to which he is so transferred without prejudice to his subsequent trial and punishment.

Re-engagement and Prolongation of Service.

84. (1.) Subject to any general or special regulations from time to time made by a Secretary of State, a soldier of the regular forces if in army service and within three years of the completion of his original term of enlistment may on the recommendation of his commanding officer, and with the approval of the competent military authority, be re-engaged for such further period of army service as will make up a total continuous period of twenty-one years of army service, reckoned from the date of his attestation, and inclusive of any period previously served in the reserve.

(2.) A soldier of the regular forces during his period of re-engagement shall be liable to forfeit his previous service during such period of re-engagement in like manner as he is liable under this part of this Act during the term of his original enlistment.

(3.) A soldier of the regular forces who so re-engages shall make before his commanding officer a declaration in accordance with the said regulations.

85. A soldier of the regular forces who has completed, or will within one year complete, a total period of twenty-one years service, inclusive of any period served in the reserve, may give notice to his commanding officer of his desire to continue in Her Majesty's service in the regular forces; and if the competent military authority approve he may be continued as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

86. The regulations from time to time made in pursuance of this part of this Act may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage, under section eighty-four, and to continue his service, under section eighty-five of this Act, or to do either of such things, subject, nevertheless, to the veto of the Secretary of State or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations.

87. (1.) Where the time at which a soldier of the regular forces would otherwise be entitled to be discharged occurs while a state of war exists between Her Majesty and any foreign power, or while such soldier is on service beyond the seas, or while soldiers in the reserve are required by a proclamation, in pursuance of this Act, to continue in or re-enter upon army service, the soldier may be detained, and his service may be prolonged for such further period, not exceeding twelve months, as the competent military authority may order; but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall, as provided by this Act, be discharged with all convenient speed.

(2.) Where the time at which a soldier of the regular forces would otherwise be entitled to be transferred to the reserve occurs while a state of war exists between Her Majesty and any foreign power, the soldier may be detained in army service for such further period, not exceeding twelve months, as the competent military authority may order, but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall with all convenient speed be sent to the United Kingdom for the purpose of being transferred to the reserve.

(3.) If a soldier required under this section to be discharged or sent to the United Kingdom desires, while a state of war exists between Her Majesty and any foreign power, to continue in Her Majesty's service, and the competent military authority approve, he may agree to continue as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the end of such state of war, or, if it is so provided by such agreement, at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

(4.) A soldier who so agrees to continue shall make before his commanding officer a declaration in accordance with any general or special regulations from time to time made by a Secretary of State.

88. (1.) It shall be lawful for Her Majesty in Council in case of imminent national danger or of great emergency, by proclamation, the occasion being first communicated to Parliament, if Parliament be then sitting, or if Parliament be not then sitting, declared by the proclamation, to direct from time to time that all or any persons who would otherwise be entitled in pursuance of the terms of their enlistment to be transferred to the reserve shall continue in army service, and such persons shall accordingly continue to serve in army service, for the same period for which they might be required to serve, if they had been transferred to the reserve and called out for permanent service by a proclamation of Her Majesty under the enactments relating to the reserve.

(2.) Any man who has entered the reserve in pursuance of the terms of his enlistment may be called out for permanent service by a proclamation of Her Majesty under the enactments relating to the calling out of the reserve on permanent service.

Discharge and Transfer to Reserve Force.

89. In the following cases; that is to say,

(1.) Where a soldier of the regular forces has been invalided from service beyond the seas; or

(2.) Where a corps to which a soldier of the regular forces belongs, or the part thereof in which he is serving, is ordered on service beyond the seas, and the soldier is either unfit for such service by reason of his health, or is within two years of the end of the period of his army service in the term of his original enlistment,

the competent military authority may by order transfer him to the reserve in like manner as if the period of his actual service were specified in his attestation paper as the portion of the term of his original enlistment which was to be spent in army service.

90. (1.) Save as otherwise provided by this Act or the Acts relating to the reserve forces, every soldier of the regular forces upon the completion of the term of his original enlistment, or of the period of his re-engagement, shall be discharged with all convenient speed, but until so discharged shall be subject to this Act as a soldier of the regular forces.

(2.) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving beyond the seas, he shall, if he so requires, be sent to the United Kingdom, and in such case shall, with all convenient speed, be sent there free of expense, and on his arrival be discharged. If such soldier is permitted, at his request, to stay at the place where he is serving, he shall not afterwards have any claim to be sent at the public expense to the United Kingdom or elsewhere.

(3.) Every soldier of the regular forces upon the completion of the period of his army service, if shorter than the term of his original enlistment, shall be transferred to the reserve, but until so transferred shall be subject to this Act as a soldier of the regular forces.

(4.) Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving beyond the seas, he shall be sent to the United Kingdom free of expense with all convenient speed, and on his arrival shall be transferred to the reserve.

(5.) A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement or is transferred to the reserve shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been at-

tested, or to any place at which he may at the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost.

91. (1.) A Secretary of State may, if he think proper, on account of a soldier's lunacy, cause any soldier of the regular forces on his discharge, and his wife and child, or any of them, to be sent to the parish or union to which under the statutes for the time being in force he appears, from the statements made in his attestation paper and other available information, to be chargeable; and such soldier, wife, or child, if delivered after reasonable notice, in England or Ireland at the workhouse in which persons settled in such parish or union are received, and in Scotland to the inspector of poor of such parish, shall be received by the master or other proper officer of such workhouse or such inspector of poor, as the case may be:

(2.) Provided that a Secretary of State, where it appears to him that any such soldier is a dangerous lunatic, and is in such a state of health as not to be liable to suffer bodily or mental injury by his removal, may, by order signified under his hand or under the hand of an under-secretary, send such lunatic direct to an asylum, registered hospital, licensed house, or other place in which pauper lunatics can legally be confined, and for the purpose of the said order the above-mentioned parish or union shall be deemed to be the parish or union from which such lunatic is sent.

(3.) In England the lunatic shall be sent to the asylum, hospital, house, or place to which a person in the workhouse aforesaid, on becoming a dangerous lunatic, can by law be removed, and an order of the Secretary of State under this section shall be of the same effect as an order by a justice within the meaning of section seventy-two of the Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the laws for the provision and regulation of lunatic asylums for counties and boroughs, and for the maintenance and care of pauper lunatics in England," and shall be subject accordingly to the provisions of that section.

(4.) The Secretary of State, before making the said order in respect of a lunatic who is liable to be delivered to the inspector of poor of a parish in Scotland, may require the inspector of poor of that parish to specify the asylum to which such lunatic if in the parish would be sent, and it shall be the duty of such inspector forthwith to specify such asylum, and thereupon the Secretary of State may

make the said order for sending the lunatic to that asylum, and such order shall be of the same effect as an order by the sheriff within the meaning of section eighty-five of the Act of the session of the twentieth and twenty-first years of the reign of Her present Majesty, chapter seventy-one, intituled "An Act for the regulation of, and care and treatment of lunatics, and for the provision, maintenance, and regulation of lunatic asylums in Scotland," and shall be subject accordingly to the provisions of that section.

(5.) In the case of any such lunatic, who is liable to be delivered at a workhouse in Ireland, at which persons settled in the said union are received, a Secretary of State may, by order under his hand, send such soldier to the asylum of the district in which such union is situate, and such order shall be of the same effect as a warrant under the hands and seals of two justices given under the provisions of the tenth section of the Act of the session of the thirtieth and thirty-first years of the reign of Her present Majesty, chapter one hundred and eighteen, intituled "An Act to provide for the appointment of the officers and servants of district lunatic asylums in Ireland, and to alter and amend the law relating to the custody of dangerous lunatics and dangerous idiots in Ireland."

92. (1.) A soldier of the regular forces shall not be discharged from those forces, unless by sentence of court-martial with ignominy, or by order of the competent military authority, or by authority direct from Her Majesty, and until duly discharged in manner provided by this Act and by regulations of the Secretary of State under this Act shall be subject to this Act.

(2.) To every soldier of the regular forces who is discharged, for whatever reason he is discharged, there shall be given a certificate of discharge, stating his service, conduct, and character, and the cause of his discharge.

Authorities to enlist and attest Recruits.

93. A Secretary of State may from time to time make and when made revoke and alter a general or special order making such regulations, giving such directions, and issuing such forms as he may think necessary or expedient respecting the persons authorised to enlist recruits for Her Majesty's regular forces, and for the purpose of such enlistment, and generally for carrying this part of this Act into effect; and any such order shall be of the same effect as if enacted in this Act.

94. (1.) For the purposes of the attestation of soldiers in pursuance of this part of this Act—

Every person exercising the office of a magistrate in India or a colony, and also each of the following persons, shall have the authority of a justice of the peace, and be deemed to be included in the expression "justice of the peace" wherever used in this part of this Act in relation to the attestation of soldiers; that is to say,

In India, any person duly authorised in that behalf by the Governor General; and in the territories of any native state in India, the person performing the duties of the office of British resident or political agent therein, or any other person authorised in that behalf by the Governor General of India; and

In a colony, any person duly authorised in that behalf by the governor of the colony; and

Beyond the limits of the United Kingdom, India, and a colony, any British consul general, consul, or vice-consul, or person duly exercising the authority of a British consul.

(2.) An officer while subject to military law shall not act as a justice of the peace for the purpose of the attestation of soldiers, in pursuance of this part of this Act, except militia officers while not embodied.

Special Provisions as to Persons to be enlisted.

95. (1.) Any person who is for the time being an alien may, if Her Majesty think fit to signify her consent through a Secretary of State, be enlisted in Her Majesty's regular forces, so however that the number of aliens serving together at any one time in any corps of the regular forces shall not exceed the proportion of one alien to every fifty British subjects, and that an alien so enlisted shall not be capable of holding any higher rank in Her Majesty's regular forces than that of a warrant officer or non-commissioned officer:

(2.) Provided that notwithstanding the above provisions of this section any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this part of this Act, and when so enlisted shall while serving in Her Majesty's regular forces be deemed to be entitled to all the privileges of a natural-born British subject.

96. The master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him while under the age of twenty-one years as follows, and not otherwise:

(1.) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in

that behalf specified in the First Schedule to this Act, and obtain from the justice a certificate of having taken such oath, which certificate the justice shall give in the form in the said schedule, or to the like effect :

- (2.) A court of summary jurisdiction within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master, but if satisfied that the apprentice stated on his attestation that he was not an apprentice may, and if required by or on behalf of the said commanding officer shall, try the apprentice for the offence of making such false statement, and if need be may adjourn the case for the purpose :
- (3.) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from Her Majesty's service :
- (4.) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound :
- (5.) A master who gives up the indenture of his apprentice within one month after the attestation of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistment as has not been paid to the apprentice before notice was given of his being an apprentice.

97. The provisions of this part of this Act with respect to apprentices shall apply to a person who at the time of his attestation is an indentured labourer in a colony, with these qualifications, that such indentured labourer, if imported at the expense of the employer or of the colony in consideration of the indenture under which he is serving, may be claimed although above the age of twenty-one years, and though bound for a less period or at an older age than is above specified.

Offences as to Enlistment.

98. If a person without due authority—

- (1.) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for Her Majesty's regular forces, or in relation to recruits for such forces ; or
- (2.) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces ; or
- (3.) Receives any person under any such advertisement as aforesaid ; or

(4.) Directly or indirectly interferes with the recruiting service of such forces, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

99. (1.) If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, he shall be liable on summary conviction to be imprisoned with or without hard labour for any period not exceeding three months.

(2.) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority, to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence.

Miscellaneous as to Enlistment.

100. (1.) Where a person after his attestation on his enlistment, or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorised by this Act, and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not until such person is discharged in pursuance of his claim affect his position as a soldier in Her Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge.

(2.) Where a person is in pay as a soldier in any corps of Her Majesty's regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.

(3.) Where a person claims his discharge on the ground that he has not been attested or re-engaged, or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority, who shall as soon as practicable submit it to a Secretary of State, and if the claim appears well grounded the claimant shall be discharged with all convenient speed.

101. (1.) Any Act or thing authorised or required by this part of this Act to be done by, to, or before the competent military authority may be done by, to, or before the commander-in-chief or the adjutant-general, or any officer prescribed in that behalf.

(2.) For the purposes of this part of this Act the expression "reserve" means the first class of the army reserve force.

PART III.

BILLETING AND IMPRESSMENT OF CARRIAGES.

Billeting of Officers and Soldiers.

102. During the continuance in force of this Act, so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers and soldiers on any inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorised by this Act.

103. (1.) Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of Her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route and stated to require quarters.

(2.) A route for the purposes of this part of this Act shall be issued under the authority of Her Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the commander-in-chief may from time to time order in that behalf.

(3.) A route purporting to be issued and signed as required by this section shall be evidence until the contrary is proved of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the officer or soldier producing the same to demand billets in accordance with such route.

104. (1.) The provisions of this part of this Act with respect to victualling houses shall extend to all inns, hotels, livery stables, or alehouses, also to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail; and the occupier of a victualling house, inn, hotel, livery stable, alehouse, or any such house as aforesaid shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a "victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house."

(2.) Provided that an officer or soldier shall not be billeted—

- (a.) In any private house; nor
- (b.) In any canteen held or occupied under the authority of a Secretary of State; nor
- (c.) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licenses for the sale of any intoxicating liquor; nor
- (d.) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tippling in such house; nor
- (e.) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and strong waters, so as such shopkeeper does not permit tippling in such house; nor
- (f.) In a house of a person licensed only to sell beer or cider not to be consumed on the premises; nor
- (g.) In the house of residence of any foreign consul duly accredited as such.

105. (1.) All officers and soldiers of Her Majesty's regular forces; and

(2.) All horses belonging to Her Majesty's regular forces; and

(3.) All horses belonging to the officers of such forces for which forage is for the time being allowed by Her Majesty's regulations,

shall be entitled to be billeted.

106. (1.) The keeper of a victualling house upon whom any officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house, and furnish there the accommodation following; that is to say, lodging and attendance for the officer; and lodging, attendance, and food for the soldier;

and stable room and forage for the horse, in accordance with the provisions of the Second Schedule to this Act.

(2.) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise, to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighbourhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable issuing the billets, he shall be relieved from providing the same in his victualling house.

(3.) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorised in this behalf by Parliament.

(4.) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at least once in every four days, pay the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command, and his or their horses (if any) have been billeted.

(5.) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named in such account as due to be paid.

107. (1.) The police authority for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horses who may be billeted on the keeper thereof.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

108. The following regulations shall be observed with respect to billeting in pursuance of this Act; that is to say,

(1.) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted:

(2.) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorised by such commanding officer:

(3.) If a keeper of a victualling house feels aggrieved by having an undue proportion of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice may complain to a court of summary jurisdiction, and the justice or court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just:

(4.) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses:

(5.) The regulations with respect to billets contained in the Second Schedule to this Act shall be duly observed by the constable:

(6.) A justice of the peace, on the request of an officer or non-commissioned officer authorised to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route:

(7.) A justice of the peace may require a constable to give an account in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names of the keepers of victualling houses on whom such officers, soldiers, and horses are billeted, and the locality of such victualling houses.

Offences in relation to Billeting.

109. If a constable commits any of the offences following; that is to say,

(1.) Billets any officer, soldier, or horse, or any person not liable to billets without the consent of such person; or

(2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a

list as liable or from his liability to billets, or from any part of such liability; or

(3.) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted; or

(4.) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding ten pounds.

110. If a keeper of a victualling house commits any of the offences following; that is to say,

(1.) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act; or

(2.) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable or from his liability to billets, or any part of such liability; or

(3.) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding five pounds.

111. (1.) If any officer quarters or causes to be billeted any officer, soldier, or horse otherwise than is allowed by this Act upon any person he shall be guilty of a misdemeanor.

(2.) If any officer or soldier commits any offence in relation to billeting for which he is liable to be punished under Part One of this Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved, he shall, upon summary conviction, be liable to a fine not exceeding fifty pounds.

(3.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

Impressment of Carriages.

112. (1.) Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of Her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or non-commissioned officer authorised by him,

and on production of such route, issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant, such carriages, animals, and drivers as are stated to be required for the purpose of moving the regimental baggage and regimental stores of the forces mentioned in the route in accordance with the route; and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose.

(2.) The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this part of this Act with respect to billeting.

(3.) A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned officer by his commanding officer, shall be a sufficient authority to such officer or non-commissioned officer to demand carriages and animals in pursuance of this Act, and when produced by an officer or non-commissioned officer shall be conclusive evidence to a justice and constable of the authority of the officer or non-commissioned officer producing the same to demand carriages and animals in accordance with such route.

(4.) The warrant ordering carriages, animals and drivers to be provided shall specify the number and description of the carriages, and also the places from and to which the same are to travel, and the distances between such places.

(5.) When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency.

(6.) A fee of one shilling and no more shall be paid for the warrant by the officer or non-commissioned officer applying for the same and shall be paid to the clerk of the justice.

113. (1.) There shall be paid in respect of the carriages and animals furnished in pursuance of this part of this Act the rates specified in the Third Schedule to this Act, and the regulations contained in that schedule with respect to the carriages and animals furnished shall be duly observed.

(2.) The following authorities; that is to say,

(a.) In England the court of general or quarter sessions of a county or of a borough subject to the Municipal Corporations Act, 1835; and

(b.) In Scotland, the commissioners of supply of a county, or the magistrates of a Royal or Parliamentary burgh; and

(c.) In Ireland the grand jury for a county, a county of a city, a county of a town and city, or a city or town and county, also any council of any such county, town or city having by law the fiscal powers of a grand jury,

may from time to time, as respects places within their jurisdiction, by order increase the rates authorised in the said schedule by such amount in respect of each rate, not exceeding one third, as may seem reasonable, and the amount of such increase shall be notified in writing by the justice granting a warrant in pursuance of this Act to the person demanding the warrant.

(3.) The order shall specify the average price of hay and oats at the nearest market town at the time of fixing such increased rates, and the order shall not be in force for more than ten days beyond the next meeting of such authority, but may be renewed from time to time by a fresh order or orders, and while in force shall have effect as part of the said schedule.

(4.) A copy of every such order, duly authenticated, shall be transmitted to a Secretary of State within three days after the making thereof.

(5.) The officer or non-commissioned officer who demands carriages, or animals in pursuance of this part of this Act shall pay the sums due in respect of the same to the owners or drivers of the carriages or animals, and one third part of such payment shall in each case, if required, be made before the carriage is loaded; and such payments shall be made, if required, in the presence of a justice or constable.

(6.) If an officer or non-commissioned officer is from any cause unable to pay the amount due to the owner or driver of any carriage or animal, he shall make up with such owner or driver and sign an account of the amount due to him, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named therein to be paid to such owner or driver.

114. (1.) The police authority for any place may cause annually a list to be made out of all persons in such place, or any particular part thereof, liable to furnish carriages and animals under this Act, and of the number and description of the carriages and animals of such persons; and where a list is so made, any justice may by warrant require any constable or constables having authority within such place to give from time to time, on demand by

an officer or non-commissioned officer under this Act, orders to furnish carriages and animals, and such warrant shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars as such special warrant.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to furnish any number or description of carriages or animals which he is not liable to furnish, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

(3.) All orders given by constables for furnishing carriages and animals shall, as far as possible, be made from such list in regular rotation.

115. (1.) Her Majesty by order, distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant by a like order, signified by the Chief Secretary or Under Secretary, may authorise any general or field officer commanding Her Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition under this section (herein-after referred to as a requisition of emergency).

(2.) The officer so authorised may issue a requisition of emergency under his hand, reciting the said order, and requiring justices of the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description, and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatsoever upon any canal or navigable river.

(3.) A justice of the peace, on demand by an officer of the portion of Her Majesty's forces mentioned in a requisition of emergency, or by an officer of a Secretary of State authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, and vessels as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision

or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables, or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels as if the expression carriages included vessels.

(4.) A Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of this section, and any difference respecting the amount of payment for any carriage, animal, or vessel shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition.

(5.) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

(6.) A requisition of emergency, purporting to be issued in pursuance of this section and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of Her Majesty's forces or of a Secretary of State shall be a sufficient authority to such officer to demand carriages, animals, and vessels in pursuance of this section, and when produced by such officer shall be conclusive evidence to a justice and constable of the authority of such officer to demand carriages, animals, and vessels in accordance with such requisition; and it shall be lawful to convey on such carriages, animals, and vessels, not only the baggage, provisions, and military stores of the troops mentioned in the requisition of emergency, but also the officer, soldiers, servants, women, children, and other persons of and belonging to the same.

Offences in relation to the Impressment of Carriages.

116. Any constable who—

- (1.) Neglects or refuses to execute any warrant of a justice requiring him to provide carriages, animals, or vessels; or
- (2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve any person from being entered in

a list as liable to furnish, or from being required to furnish, or from furnishing any carriage, animal, or vessel; or

- (3.) Orders any carriage, animal, or vessel to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished, shall, on summary conviction, be liable to a fine of not less than twenty shillings nor more than twenty pounds.

117. A person ordered by any constable in pursuance of this Act to furnish a carriage, animal, or vessel who—

- (1.) Refuses or neglects to furnish the same according to the orders of such constable and this Act; or
- (2.) Gives or agrees to give to a constable or to any officer or non-commissioned officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any carriage, animal, or vessel in pursuance of this Act; or
- (3.) Does any Act or thing by which the execution of any warrant or order for providing or furnishing carriages, animals, or vessels is hindered,

shall, on summary conviction, be liable to pay a fine of not less than forty shillings nor more than ten pounds.

118. (1.) Any officer or soldier who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part One of this Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved, shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings.

(2.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

Supplemental Provisions as to Billeting and Impressment of Carriages.

119. (1.) The following persons; that is to say,

- (a.) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or
- (b.) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier billeted upon him, or if

the owner or driver of any carriage, animal, or vessel furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the place only after first making due complaint, if practicable to such commanding officer,

may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the same to a Secretary of State, who shall forthwith cause the amount due to be paid.

(2.) Provided that the Secretary of State, if it appear to him that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just.

120. (1.) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority; and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself exercise the powers and perform the duties by this part of this Act vested in or imposed on a constable, and in such case every such person is in this part of this Act included in the expression "constable."

(2.) A person having or executing any military office or commission in any part of the United Kingdom shall not, directly or indirectly, be concerned, as a justice or constable, in the billeting of or appointing quarters for any officer or soldier or horse of the corps, or part of a corps, under his immediate command, and all warrants, acts, and things made, done, and appointed by such person for or concerning the same shall be void.

121. If any person—

- (1.) Forges or counterfeits any route or requisition of emergency, or knowingly produces to a justice or constable any route or requisition of emergency so forged or counterfeited; or
- (2.) Personates or represents himself to be an officer or soldier authorised to demand any billet, or any carriage, animal, or

vessel, or to be entitled to be billeted, or to have his horse billeted; or

- (3.) Produces to a justice or constable a route or requisition which he is not authorised to produce, or a document falsely purporting to be a route or requisition, he shall be liable, on summary conviction, to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds.

PART IV.

GENERAL PROVISIONS.

Supplemental Provisions as to Courts-martial.

122. (1.) Her Majesty may, subject to the provisions of this Act, by any warrant or warrants under Her Sign Manual, in such form as Her Majesty may from time to time direct, from time to time—

- (a.) Convene or authorise any qualified officer to convene a general court-martial for the trial under this Act of any person subject to military law; and
- (b.) Give a general authority to any qualified officer to convene general courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command; and
- (c.) Empower any qualified officer to delegate, to any officer under his command not below the degree of field officer, a general authority to convene general courts-martial for the trial, under this Act, of such persons subject to military law, as are for the time being under or within the territorial limits of his command; and
- (d.) Reserve for confirmation by Her Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial; and
- (e.) Empower any officer for the time being authorised to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or sentences to any officer under his command not below the degree of field officer; and
- (f.) Revoke any warrant for the time being in force, or any part of any warrant, leaving the remainder in full force:

Provided that where it appears to Her Majesty that in any place out of the United

Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorised under this section to be delegated to a field officer.

(2.) The same officer may or may not be appointed convening and confirming officer.

(3.) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to Her Majesty may seem meet, and when delegated by any officer empowered in that behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions, and conditions as to such officer may seem fit.

(4.) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the office named, or be extended to the successors in command of an officer.

(5.) Any warrant of Her Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act.

(6.) "Qualified officer" for the purposes of this Act, in so far as it relates to convening or confirming the findings and sentences of general courts-martial, means the Commander-in-Chief and any officer not below the rank of a field officer commanding for the time being any body of the regular forces either within or without Her Majesty's dominions; it also includes the Lord Lieutenant of Ireland, the Governor-General of India, and a Governor of any colony on whom the command of any body of regular forces may be conferred by Her Majesty.

123. (1.) Any officer or person authorised to convene general courts-martial may—

(a.) Convene a district courts-martial for the trial under this Act of any person under his command who is subject to military law; and

(b.) Empower any person under his command not below the rank of captain to convene a district court-martial for the trial under

this Act of any person under the command of such last-mentioned officer who is subject to military law; and

(c.) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorise to convene district courts-martial to confirm the finding and sentence of any district court-martial.

(2.) The same officer may or may not be appointed convening and confirming officer under this section.

(3.) The power of convening, and of confirming the findings and sentences of, district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet.

(4.) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer.

124. Any person tried by a court-martial shall be entitled, on demand, at any time in the case of a general court-martial within seven years, and in the case of any other court-martial within three years after the confirmation of the finding and sentence of the court, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, upon payment for the same at the prescribed rate, not exceeding twopence for every folio of seventy-two words, and for the purposes of this section the proceedings of courts-martial shall be preserved in the prescribed manner.

125. (1.) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.

(2.) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest as he would have if he were a witness before a superior court of civil jurisdiction.

126. (1.) Where any person who is not subject

to military law commits any of the following offences; that is to say,

(a.) On being duly summoned as a witness before a court-martial, and after payment or tender of the reasonable expenses of his attendance, makes default in attending; or

(b.) Being in attendance as a witness—

(i.) Refuses to take an oath legally required by a court-martial to be taken; or

(ii.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or

(iii.) Refuses to answer any question to which a court-martial may legally require an answer,

the president of the court-martial may certify the offence of such person under his hand to any court of law in the part of Her Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

(2.) Where a person not subject to military law when examined on oath or solemn declaration before a court-martial wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury, or the offence by whatever name called in the part of Her Majesty's dominions in which the offence is tried which, if committed in England, would be perjury.

(3.) Where a person not subject to military law is guilty of any contempt towards a court-martial, by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify the offence of such person, under his hand, to any court of law in the part of Her Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for

the punishment of such person in like manner as if he had been guilty of contempt of that court.

127. A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance, of any legislature whatsoever other than the Parliament of the United Kingdom.

128. The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts in England, and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court.

129. Whereas it is expedient to make provision respecting the conduct of counsel when appearing on behalf of the prosecution or defence at general courts-martial in pursuance of rules under this Act, be it therefore enacted as follows:

(1.) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before Her Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court-martial; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.

(2.) Where a counsel is guilty of conduct liable to censure, or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

(3.) A court-martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of

law in manner provided by the above-mentioned section.

130. (1.) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity unfit to take his trial, the court shall find specially that fact; and such person shall be kept in custody in the prescribed manner until the directions of Her Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

(2.) Where on the trial by court-martial of a person charged with an offence it appears that such person committed the offence, but that he was insane at the time of the commission thereof, the court shall find specially the fact of his insanity, and such person shall be kept in custody in the prescribed manner until the directions of Her Majesty thereon are known.

(3.) In either of the above cases Her Majesty may give orders for the safe custody of such person during her pleasure, in such place and in such manner as Her Majesty thinks fit.

(4.) A finding under this section shall be subject to confirmation in like manner as any other finding.

(5.) If a person imprisoned by virtue of this Act becomes insane, then, without prejudice to any other provision for dealing with such insane prisoner, a Secretary of State in any case, and in the case of a prisoner confined in India the Governor-General of India, or the Governor of any presidency in which the person is confined, and in the case of a prisoner confined in a colony the Governor of that colony, may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such prisoner to an asylum or other proper place for the reception of insane persons in the United Kingdom, India, or the colony, according as the prisoner is confined in the United Kingdom, India, or the colony, there to remain for the unexpired term of his imprisonment, and, upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment.

General Provisions as to Prisons.

131. (1.) A Secretary of State may from time to time make arrangements with the Governor-General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act, and of deserters or absentees without leave from Her Majesty's service, on payment

of such sums as are provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters, and absentees without leave:

(2.) Provided that where a prisoner has been sentenced in India or in a colony to a term of imprisonment exceeding twelve months or to a term of penal servitude, he shall be transferred as soon as practicable to a prison or convict establishment within the United Kingdom, unless in the case of imprisonment the court shall for special reasons otherwise order, there to undergo his sentence; or unless he belongs to a class with respect to which a Secretary of State has declared that, by reason of the climate or place of his birth or the place of his enlistment, or otherwise, it is not beneficial to the prisoner to transfer him to the United Kingdom; every such declaration shall be laid before both Houses of Parliament.

(3.) Any order which can be made under this section by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence, may be made by the authority commuting or remitting the sentence.

132. (1.) The governor of every prison in the United Kingdom, and the governor of every prison in India or a colony who is under the same obligation as the governor of a prison in the United Kingdom, shall receive and confine, until discharged or delivered over in due course of law, all prisoners sent to such prison in pursuance of this Act, and every person delivered into his custody as a deserter or absentee without leave by any person conveying him under legal authority, on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, or from the Governor-General of India, or the governor of a colony, which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

(2.) Every such governor shall also receive into his custody for a period not exceeding seven days, any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.

(3.) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined.

Military Prisons.

133. (1.) It shall be lawful for a Secretary of State, and in India for the Governor-General, to set apart any building or part of a building under the control of the Secretary of State or Governor-General as a military prison, or as a public prison for the imprisonment of military prisoners, and to declare that any such building or part of a building shall be a military prison, or a public prison, as the case may be, and every military prison so declared shall be deemed to be a public prison within the meaning of the provisions of this Act relating to imprisonment, and if such prison is in India shall be deemed to be an authorised prison.

(2.) It shall be lawful for a Secretary of State, and in India for the Governor-General, from time to time to make, alter, and repeal rules for the government, management, and regulation of military prisons, and for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof, and for the labour of military prisoners therein, and for the safe custody of such prisoners, and for the maintenance of discipline among them, and for the punishment by personal correction, not exceeding twenty-five lashes in the case of corporal punishment, restraint, or otherwise of offences committed by such prisoners, so, however, that such rules shall not authorise corporal punishment to be inflicted for any offence in addition to the offences for which such punishment can be inflicted in pursuance of the Prison Act, 1865, and the Prison Act, 1877, nor render the imprisonment more severe than it is under the law in force for the time being in any public prison in England, subject to the Prison Act, 1877, and provided that all the regulations in the Prison Act, 1865, and in the Prison Act, 1877, as to the duties of gaolers, medical officers, and coroners shall be contained in such rules, so far as the same can be made applicable.

(3.) On all occasions of death by violence or attended with suspicious circumstances in any military prison in India an inquest is to be held, to make inquiry into the cause of death. The commanding officer shall cause notice to be given to the nearest magistrate, duly authorised to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure.

(4.) Where from any cause there is no competent civil authority available, the commanding officer shall convene a court of inquest. Such court shall be convened and

shall hold the inquest in such manner as may be prescribed.

(5.) Such rules may apply to such prisons any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

(6.) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, as soon as practicable after the commencement of the then next session of Parliament.

134. (1.) No soldiers shall be confined, longer than is absolutely necessary, in prisons other than military prisons in India and the colonies where the rules for the government and management of such prisons differ from those made by the Governor-General of India and a Secretary of State in the case of India and the colonies respectively.

135. Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, a Secretary of State shall from time to time make rules for the classification and treatment of such prisoners.

Pay.

136. The pay of an officer or soldier of Her Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or by any royal warrant for the time being.

137. The following penal deductions may be made from the ordinary pay due to an officer of the regular forces:

- (1.) All ordinary pay due to an officer who absents himself without leave or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been notified as satisfactory by the Commander-in-Chief to a Secretary of State:
- (2.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence:
- (3.) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay.

138. The following penal deductions may be made from the ordinary pay due to a soldier of the regular forces :

- (1.) All ordinary pay for every day of absence either on desertion or without leave, or as prisoner of war, and for every day of imprisonment either under sentence for an offence awarded by a civil court or court-martial, or by his commanding officer, or if he is on board one of Her Majesty's ships by the commanding officer of that ship, or under detention on the charge for an offence of which he is afterwards convicted by a civil court or court-martial, or under detention on the charge for absence without leave for which he is afterwards awarded imprisonment by his commanding officer ;
- (2.) All ordinary pay for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence under this Act committed by him ;
- (3.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence, or if he is on board of one of Her Majesty's ships by the commanding officer of that ship, or where he has confessed the offence and his trial is dispensed with by order under section seventy-one of this Act, as may be awarded by that order or by any other order of a competent military authority under that section ;
- (4.) The sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer, or, in case he requires to be tried by a court-martial, by that court-martial, or if he is on board one of Her Majesty's ships, by the commanding officer of that ship ;
- (5.) Where a soldier at the time of his enlistment belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment ;
- (6.) Where a soldier's liquor ration is stopped by his commanding officer on board any

ship, whether commissioned by Her Majesty or not, the sum equivalent to such ration, whether previously drawn by the soldier or not, not exceeding one penny a day for twenty-eight days ;

- (7.) The sum required to pay a fine awarded by a court-martial, his commanding officer, or a civil court ; and
- (8.) The sum required to pay any sum ordered by a Secretary of State to be paid as mentioned in this Act for the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child :

Provided that—

(a.) the total amount of deductions from the ordinary pay due to a soldier in respect of the sums required to pay any compensation, fine, or sum awarded or ordered to be paid as aforesaid by a court-martial, commanding officer, or Secretary of State shall not exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny a day ; and

(b.) a person shall not be subjected in respect of any compensation, fine, or sum awarded or ordered to be paid as aforesaid to any deductions greater than is sufficient to make good the expenses, loss, damage, or destruction for which such compensation is awarded, or to pay the said sum.

139. Any deduction of pay authorised by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Secretary of State.

140. (1.) Any sum authorised by this Act to be deducted from the ordinary pay of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due to such officer or soldier, in such manner, and when deducted or recovered may be appropriated in such manner, as may be from time to time directed by any regulation or order of the Secretary of State.

(2.) And any such regulation or order may from time to time declare what shall be deemed for the purposes of the provisions of this Act relating to deductions from pay to constitute a day of absence or a day of imprisonment, so, however, that no time shall be so reckoned as a day unless the absence or imprisonment has lasted for six hours or upwards, whether wholly in one day or partly in one day and partly in another, or unless such absence prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

(3.) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or soldier, the pay may be withheld until Her Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

141. Every assignment of, and every charge on, and every agreement to assign or charge any deferred pay, or military reward payable to any officer or soldier of any of Her Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his widow, child, or other relative, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant for the benefit of the family of the person entitled thereto, or as may be authorised by any Act for the time being in force, be void.

142. (1.) Where any regulations made by the Secretary of State or the Commissioners of Her Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connexion with such payment, such oath may be administered and declaration taken by the persons specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

(2.) Any person who falsely represents himself to any military, naval, or civil authority to belong to or to be a particular man in the regular reserve or auxiliary forces shall be deemed to be guilty of personation.

(3.) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds.

(4.) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

Exemptions of Officers and Soldiers.

143. (1.) All officers and soldiers of Her Majesty's regular forces on duty or on the march; and

Their horses and baggage; and

All prisoners under military escort; and

All carriages and horses belonging to Her Majesty or employed in her military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same

shall be exempted from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge, otherwise demandable by virtue of any Act of Parliament already passed or hereafter to be passed, or by virtue of any Act, Ordinance, order, or direction of the legislature or other authority in India or any colony:

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels.

(2.) When any soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his soldiers as passengers, and shall pay for himself and each soldier one half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time, and shall in all such cases pay only half the ordinary rate for such boat.

(3.) Any person who demands and receives any duty, toll, or rate in contravention of this section shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

144. (1.) A soldier of Her Majesty's regular forces shall not be liable to be taken out of Her Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them; that is to say,

(a.) On account of a charge of or conviction for crime; or

(b.) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.

(2.) For the purposes of this section a crime shall mean a felony, misdemeanor, or other crime or offence punishable, according to the law in force in that part of Her Majesty's

dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his conduct.

(3.) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate.

(4.) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be sworn, without payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be indorsed upon any process or order issued against a soldier.

(5.) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void; and where complaint is made by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court or some judge thereof shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

(1.) Any person having cause of action or suit against a soldier of the regular forces may, notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, regimental necessities, or clothing of such soldier; and

(2.) This section shall not prevent such proceeding with respect to apprentices and indentured labourers as is authorised by this Act.

145. (1.) A soldier of the regular forces shall be liable to contribute to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person, pay, arms,

ammunition, equipments, instruments, regimental necessities, or clothing; nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any union, parish, or place.

(2.) When any order decree is made under any Act or at common law for payment by a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of such order or decree shall be sent to a Secretary of State, and in the case—

(a.) Of such order or decree being so sent; or

(b.) Of it appearing to the satisfaction of a Secretary of State that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under fourteen years of age,

the Secretary of State may order a portion not exceeding sixpence of the daily pay of a non-commissioned officer who is not below the rank of sergeant, and not exceeding threepence of the daily pay of any other soldier, to be deducted from such daily pay, and to be appropriated, in the first case, in liquidation of the sum adjudged to be paid by such order or decree, and in the second case, towards the maintenance of such wife or children, in such manner as the Secretary of State thinks fit.

(3.) Where a proceeding is instituted against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or, if the proceeding is before a court of summary jurisdiction, out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if made against the soldier) sufficient to enable him to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose; and no process whatever under any Act or at common law in any proceeding in this section mentioned shall be valid against a soldier of the regular forces if served after such soldier is under orders for service beyond the seas.

146. A person who is commissioned and in full pay as an officer in Her Majesty's regular forces shall not be capable of being nominated

or elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom.

147. Every soldier in Her Majesty's regular forces shall be exempt from serving on any jury.

Court of Requests in India.

148. Where any part of Her Majesty's regular forces is serving in India, beyond the jurisdiction of any court of small causes established by or under the authority of the Governor-General of India in Council, actions of debt and personal actions against officers and other persons subject to military law, with the exception of persons being soldiers of the regular forces, which would be cognizable by such court of small causes if the said part of Her Majesty's regular forces were within the jurisdiction of the court, shall be cognizable before a court of requests composed of officers, and not elsewhere; provided that—

- (a.) The value in question does not exceed four hundred rupees; and
 - (b.) The defendant was a person of the above description when the cause of action arose; and
 - (c.) Nothing in this Act shall enable an action to be brought in a military court of requests by an officer or soldier of the regular forces.
- (2.) The commanding officer of any camp, garrison, cantonment, or military post is hereby empowered to convene any such Court.
- (3.) Whenever, owing to paucity of officers, or to any other cause, a court of requests cannot conveniently be held at the place where the defendant may be, the officer commanding the division or district may authorise a court to be convened by the officer commanding at the nearest place where such court can be formed.

149. (1.) Courts of request under this Act shall in all practicable cases consist of five officers, and in no instance of less than three.

(2.) The president thereof shall in all practicable cases be a field officer, and in no case be under the rank of a captain.

(3.) Every member shall have served not less than five years as a commissioned officer.

(4.) Before any proceedings are had before such court the president and members shall take the following oath, which oath shall be administered by the president of the court to the other members thereof, and to the president by any sworn member; (that is to say),

' You swear, that you will
' duly administer justice according to the
' evidence in the matters brought before you.
' So help you GOD.'

(5.) All witnesses before any such court shall be sworn and examined in the like manner as in the case of a trial by court-martial, and shall be liable to the same punishment for giving false evidence.

(6.) The provisions of this Act with respect to the substitution of a solemn declaration for an oath in the case of a court-martial, shall apply as if they were enacted in this section, and in terms made applicable thereto.

150. (1.) A military court of requests held in India under the authority of this Act, on adjudging payment of any sum by any person subject to military law (in this section referred to as the debtor), may either award execution thereof generally, or direct specially that the amount named in the direction, being the whole or any part of the said sum, shall be paid by instalments or otherwise out of any pay or other public money payable to the debtor, and the amount named in the direction, not exceeding one half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction.

(2.) Where execution is awarded generally by a military court of requests, the sum, if not paid forthwith, shall be levied by seizure and public sale of such of the property of the debtor as may be found within the camp, garrison, cantonment, or military post to which the debtor belongs, and, if the proceeds are insufficient to pay the said sum, as may be found within the limits of a camp, garrison, cantonment, or military post in India to which the debtor may belong at any subsequent time.

(3.) The levy and seizure shall be made under a written order of the commanding officer of such camp, garrison, cantonment, or military post, grounded on the judgment of the court.

(4.) The arms and equipment of a debtor shall not be liable to be seized or sold under this section.

(5.) All orders of the commanding officer as to the manner of such sale, or the person by whom the same shall be made, or otherwise respecting the same, shall be duly observed; and if any question arises whether any such property is liable to be seized or sold as aforesaid, the decision of the said commanding officer thereon shall be final.

(6.) If sufficient property is not found within the limits of the camp, garrison, cantonment, or military post, then any pay or public money (not exceeding one half) accruing to the debtor shall, while the debtor is in India, be stopped, in liquidation of the said sum.

(7.) If the debtor does not receive pay as an officer or from any public department, he may be arrested by order of the commanding officer of the camp, garrison, cantonment, or military post, and imprisoned in some convenient place within the camp, garrison, cantonment, or military post, for any period not exceeding two months, unless the said sum be sooner paid.

(8.) The commanding officer shall not, nor shall any person acting on his orders in respect of the matters aforesaid, incur any liability to any person whomsoever for any act done by him in execution or intended execution of the provisions of this section.

151. (1.) In India all actions of debt and personal actions against persons subject to military law, other than soldiers of the regular forces, within the jurisdiction of any court of small causes, shall be cognisable by such court to the extent of its powers.

(2.) All such actions where the amount sued for exceeds four hundred rupees shall be cognisable by a civil court or court of small causes only.

(3.) A civil court or court of small causes, upon adjudging payment of any sum by any person subject to military law other than a soldier of the regular forces, may either award execution thereof generally, or may direct specially that the amount named in the direction, being the whole or any part of the said sum, shall be paid by instalments or otherwise out of any pay or other public money payable to the debtor, and the amount named in the direction, not exceeding one half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction.

(4.) In regard to award of execution generally, a civil court or court of small causes shall proceed in accordance with the rules of procedure of such court in India.

Legal Penalties in Matters respecting Forces.

152. Any person who falsely represents himself to any military, naval, or civil authority to be a deserter from Her Majesty's regular forces shall on summary conviction be sentenced to be imprisoned, with or without hard labour, for any period not exceeding three months.

153. Any person who in the United Kingdom or elsewhere by any means whatsoever—

(1.) Procures or persuades any soldier to desert, or attempts to procure or persuade any soldier to desert; or

(2.) Knowing that a soldier is about to desert, aids or assists him in deserting; or

(3.) Knowing any soldier to be a deserter, conceals such soldier, or aids or assists him in concealing himself, or aids or assists in his rescue,

shall be liable on summary conviction to be imprisoned, with or without hard labour, for a term not exceeding six months.

154. With respect to deserters the following provisions shall have effect:

(1.) Upon reasonable suspicion that a person is a deserter, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction:

(2.) Where a person is brought before a court of summary jurisdiction charged with being a deserter under this Act, such court may deal with the case in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence:

(3.) The court, if satisfied either by evidence on oath or by the confession of such person that he is a deserter, shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody:

(4.) Where the person confessed himself to be a deserter, and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom to a Secretary of State, and if in India to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by a Secretary of State:

(5.) The court may from time to time remand the said person for a period not exceeding

eight days in each instance and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information :

- (6.) Where the court cause a person either to be delivered into military custody or to be committed as a deserter, the court shall send, if in the United Kingdom to a Secretary of State, and if in India or a colony to the general or other officer commanding as aforesaid, a descriptive return in relation to such deserter, for which the clerk of the court shall be entitled to a fee of two shillings :
- (7.) A Secretary of State shall direct payment of the said fee.

155. Every person (except the Army Purchase Commissioners, and persons acting under their authority by virtue of the Regulation of the Forces Act, 1871,) who negotiates, acts as agent for, or otherwise aids or connives at—

- (1.) The sale or purchase of any commission in Her Majesty's regular forces ; or
- (2.) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein ; or
- (3.) Any exchange which is made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which any sum of money or other consideration is given or received,

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service.

156. (1.) Every person who—

- (a.) Buys, exchanges, takes in pawn, detains, or receives from a soldier, or any person acting on his behalf, on any pretence whatsoever ; or
- (b.) Solicits or entices any soldier to sell, exchange, pawn, or give away ; or
- (c.) Assists or acts for a soldier in selling, exchanging, pawning, or making away with,

any of the property following ; namely, any arms, ammunition, equipments, instruments, regimental necessaries, or clothing, or any military decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, and stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier, or his horse, or of any horse employed in Her Majesty's service, shall, unless he proves either that he acted in ignorance of the same being such property as

aforesaid, or of the person with whom he dealt being or acting for a soldier, or that the same was sold by order of a Secretary of State or some competent military authority, be liable on summary conviction, in the case of the first offence, to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence ; and in the case of a second offence, to a fine not less than five pounds, and not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months.

(2.) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction, and if such court have reasonable ground to believe that the property so found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then if such person does not satisfy the court that he came by the property so found lawfully and without any contravention of this Act, he shall be liable on summary conviction to a penalty not exceeding five pounds.

(3.) A person charged with an offence against this section, and the wife or husband of such person, may, if he or she think fit, be sworn and examined as an ordinary witness in the case.

(4.) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a court of summary jurisdiction ; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him, together with such property, before a court of summary jurisdiction.

(5.) A court of summary jurisdiction, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods ; and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of

summary jurisdiction to be dealt with according to law.

(6.) For the purposes of this section property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another.

(7.) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description, shall not be deemed to be stores issued as regimental necessities or otherwise within the meaning of section thirteen of that Act.

(8.) It shall be lawful for the Governor-General of India or for the legislature of any colony, on the recommendation of the governor thereof, but not otherwise, by any law or ordinance to reduce a minimum fine under this section to such amount as may to such Governor-General or legislature appear to be better adapted to the pecuniary means of the inhabitants.

Jurisdiction.

157. Where a person subject to military law has been acquitted or convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence.

158. (1.) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law, in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject:

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment, unless his trial commences within three months after he has ceased to be subject to military law; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial.

(2.) Where a person subject to military law is sentenced by court-martial to penal servitude or imprisonment, this Act shall apply to him during the term of his sentence, notwithstanding that he is discharged or dismissed

from Her Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, and punished accordingly as if he continued to be subject to military law.

159. Any person subject to military law who within or without Her Majesty's dominions commits any offence for which he is liable to be tried by court-martial may be tried and punished for such offence at any place (either within or without Her Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial.

160. No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed.

161. A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial; and where a soldier has served continuously in an exemplary manner for not less than three years in any corps of Her Majesty's regular forces he shall not be tried for any such offence of desertion (other than desertion on active service), or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment all service prior to such enlistment shall be forfeited.

162. (1.) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence, that court shall, in awarding punishment, have regard to the military punishment he may have already undergone.

(2.) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law, when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of

this Act relating to taking a soldier out of Her Majesty's service.

(3.) If an officer—

(a.) Neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command, who is so accused or convicted as aforesaid; or

(b.) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of Her Majesty's superior courts in the United Kingdom, or in a supreme court in India, be guilty of a misdemeanor.

(4.) A certificate of a conviction of an officer under this section, with the judgment of the court thereon in such form as may be directed by a Secretary of State, shall be transmitted to such Secretary of State.

(5.) Any offence committed by any such commanding officer out of the United Kingdom shall for the purpose of the apprehension, trial and punishment of the offender be deemed to have been committed within the jurisdiction of Her Majesty's High Court of Justice in England; and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England.

(6.) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried in respect of that offence under this Act.

Evidence.

163. (1.) The following enactment shall be made with respect to evidence in proceedings under this Act, whether before a civil court or a court-martial; that is to say,

(a.) The attestation paper purporting to be signed by a person on his being attested as a soldier, or the declaration purporting to be made by any person upon his re-engagement in any of Her Majesty's regular forces, or upon any enrolment in any branch of Her Majesty's service, shall be evidence of such person having given the answers to questions which he is therein represented as having given:

The enlistment of a person in Her Majesty's service may be proved by the production of a copy of his attestation paper purporting to be certified to be a true copy by the officer having the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper:

(b.) A letter, return, or other document

respecting the service of any person in or the discharge of any person from any portion of Her Majesty's forces, or respecting a person not having served in or belonged to any portion of Her Majesty's forces, if purporting to be signed by or on behalf of a Secretary of State, or of the Commissioners of the Admiralty, or by the commanding officer of any portion of Her Majesty's forces, or of any of Her Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document:

(c.) Copies purporting to be printed by a Government printer of Queen's regulations, of royal warrants, of army circulars, and of rules made by Her Majesty, or a Secretary of State, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars, and rules:

(d.) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer or to be issued, if in the United Kingdom, by Her Majesty's Stationery Office, and if in India, by some office under the Governor-General of India or the Governor of any presidency in India, shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong:

(e.) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or orders purporting to be certified to be true copies by the officer therein alleged to be authorised by a Secretary of State or Commander-in-Chief to certify the same shall be admissible in evidence:

(f.) Evidence of the delivery at the then last registered place of abode of a man enrolled in the Army Reserve of a notice issued by the proper officer under the direction of a Secretary of State or of the delivery of a letter containing such notice addressed to the said place of abode, shall be evidence that such notice was brought to the knowledge of such man:

(g.) Where a record is made in one of the regimental books in pursuance of any Act or of the Queen's regulations, or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to

make such record, such record shall be evidence of the facts thereby stated:

(h.) A copy of any record in one of the said regimental books purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record:

(i.) A descriptive return within the meaning of this Act, purporting to be signed by a justice of the peace, shall be evidence of the matters therein stated.

(2.) For the purposes of this Act the expression "Government printer" means any printer to Her Majesty, and in India any Government press.

164. Whenever any person subject to military law has been tried by any civil court, the clerk of such court, or his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment of the court thereon if he was convicted, and the acquittal if he was acquitted, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence or of the acquittal of the prisoner, as the case may be.

165. The original proceedings of a court-martial, purporting to be signed by the president thereof and being in the custody of the Judge Advocate General, or of the officer having the lawful custody thereof, shall be deemed to be of such a public nature as to be admissible in evidence on their mere production from such custody; and any copy purporting to be certified by such Judge Advocate General or his deputy authorised in that behalf, or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence without proof of the signature of such Judge Advocate General, deputy, or officer; and a Secretary of State, upon production of any such proceedings or certified copy, may, by warrant under his hand, authorise the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned.

Summary and other Legal Proceedings.

166. (1.) A court of summary jurisdiction having jurisdiction in the place where the offence was committed or in the place where the offender may for the time being be shall

have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanor, or to be punishable on indictment; and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on summary conviction, in manner provided by the Summary Jurisdiction Acts.

(2.) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable.

(3.) A court of summary jurisdiction imposing a fine in pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one half to be paid to the informer.

(4.) Where the maximum fine or imprisonment which a court of summary jurisdiction in England, when sitting in an occasional court-house, is authorised by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may impose the maximum fine or imprisonment which such court is authorised by law to impose, but if required by either party, shall adjourn the case to the next practicable petty sessional court.

(5.) The court of summary jurisdiction in Ireland, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

(6.) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act, if recovered in England, be paid into the Exchequer, and if recovered in Ireland, shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same.

167. (1.) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorised by a Secretary of State or the Commander-in-Chief, or of any person authorised by this Act to complain.

(2.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months, and the conviction and warrant may be in the form number three of Schedule K. of the Summary Procedure Act, 1864.

(3.) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the Queen's and Lord Treasurer's Remembrancer, on behalf of Her Majesty.

(4.) It shall be no objection to the competency of a person to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person.

(5.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

(6.) All jurisdictions, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace.

(7.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form.

168. All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jurisdiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, and any colony in such courts and in such manner as may be from time to time provided therein by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law, or as near thereto as circumstances admit.

169. It shall be lawful for the Governor-General of India, and for the legislature of any colony, to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor-General or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act.

170. (1.) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within twelve months next after the ceasing thereof.

(2.) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in one of Her Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a supreme court in India, or in any Colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian or Colonial court respectively, and in no other court whatsoever.

Miscellaneous.

171. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service.

172. (1.) Where any order is authorised by this Act to be made by the Commander-in-Chief or the Adjutant-General, or by the Commander-in-Chief or Adjutant-General of the forces in India or in any presidency in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such Commander-in-Chief, Adjutant-General, or general or other officer commanding, and an order, instruction, or letter purporting to

be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised.

(2.) An order issued in pursuance of this Act in relation to a military convict or military prisoner shall not be held void by reason of the death or removal from office of the officer issuing the same, or by reason of any defect in such order, if it be alleged in such order that the convict or prisoner has been convicted, and there is a good and valid conviction to sustain the order.

(3.) An order in any case if issued in the prescribed form shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation.

(4.) Where any military convict or military prisoner is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict or prisoner shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict or prisoner was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly.

173. If any soldier on furlough is detained by sickness or other casualty rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier, if known, and if not, then to a Secretary of State. The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall; but, save as aforesaid, the soldier shall not in respect of the period of such extension of furlough, be liable to be treated as a deserter, or as absent without leave.

174. (1.) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any license for the time being required to enable such person to obtain or hold any excise license for the sale of any intoxicating liquor, without regard to the

time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting such licenses; and excise licenses may be granted to such persons accordingly.

(2.) For the purposes of this section the expression license includes any license or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise license for the sale of any intoxicating liquor.

PART V.

APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS.

Persons subject to Military Law.

175. The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified; that is to say,

(1.) Officers of the regular forces on full pay, and, if not otherwise subject to military law, officers of the staff of the Army, and officers employed on military service under the orders of an officer of the regular forces:

(2.) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law:

(3.) Officers of the militia other than members of the permanent staff:

(4.) All such persons not otherwise subject to military law as may be serving in the position of officers of any troops or portion of troops raised by order of Her Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces:

Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of a colony:

(5.) Officers of the yeomanry, and officers of the volunteers, whenever in actual command of men who are in pursuance of this Act subject to military law, or when their corps is on actual military service:

(6.) Any officer of the yeomanry or volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject to military law, whether of the regular or auxiliary forces, or, with his own consent, is ordered on duty by the military authorities:

(7.) Every person not otherwise subject to military law who under the general or special orders of a Secretary of State or of the Governor-General of India accompanies in an official capacity equivalent to that of officer any of Her Majesty's troops on active service in any place beyond the seas, subject to this qualification, that where such person is a native of India he shall be subject to that law as an officer :

(8.) Any person, not otherwise subject to military law, accompanying a force on active service, who shall hold from the commanding officer of such force a pass, revocable at the pleasure of such commanding officer, entitling such person to be treated on the footing of an officer.

176. The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified ; that is to say,

- (1.) All soldiers of the regular forces :
- (2.) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces who are not otherwise subject to military law :
- (3.) All non-commissioned officers and men serving in a force raised by order of Her Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces :

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony :

- (4.) All pensioners not otherwise subject to military law who are employed in military service under the orders of an officer of the regular forces :
- (5.) All non-commissioned officers and men belonging to the army reserve force or the militia reserve force,—
 - (a.) When called out for training and exercise ; and
 - (b.) When called out for duty in aid of the civil power ; and
 - (c.) When called out on permanent service under Her Majesty's proclamation :
- (6.) All non-commissioned officers and men in the militia of the United Kingdom,—
 - (a.) During their preliminary training ; and
 - (b.) When they or the body of militia to which they belong are being trained or exercised either alone or with any portion of the regular forces or otherwise ; and

(c.) When attached to or otherwise acting as part of or with any regular forces ; and

(d.) When embodied :

(7.) All non-commissioned officers and men belonging to the yeomanry force of the United Kingdom,—

(a.) When they or their corps are being trained or exercised, either alone or with any portion of regular forces, or with any portion of the militia when subject to military law ; and

(b.) When they are attached to or otherwise acting as part of or with any regular forces ; and

(c.) When their corps is on actual military service ; and

(d.) When serving in aid of the civil power :

(8.) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom,—

(a.) When they are being trained or exercised with any portion of the regular forces or with any portion of the militia when subject to military law ; and

(b.) When they are attached to or otherwise acting as part of or with any regular forces ; and

(c.) When their corps is on actual military service :

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service.

(9.) All persons who are employed by or are in the service of any of Her Majesty's troops when employed on active service beyond the seas, and who are not under the former provisions of this Act subject to military law :

(10.) All persons not otherwise subject to military law who are followers of or accompany Her Majesty's troops, or any portion thereof, when employed on active service beyond the seas ; subject to this qualification that, where any such persons are employed by or are followers of, or accompany any portion of, Her Majesty's forces, consisting partly of Her Majesty's Indian forces subject to Indian military law, and such persons are natives of India, they shall be subject to Indian military law.

177. Where any force of volunteers, or of militia, or any other force, is raised in India, or in a colony, any law of India or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India or the colony; and where any such force is serving with part of Her Majesty's regular forces, then so far as the law of India or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the general officer commanding Her Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers, and men respectively mentioned in the two preceding sections of this Act.

178. When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any pensioners, are subject to military law in pursuance of this Act, such officers, non-commissioned officers, men and pensioners shall be subject to this Act in all respects as if they were part of the regular forces, and the provisions of this Act shall be construed as if such officers, non-commissioned officers, men and pensioners were included in the expression "regular forces": Provided that nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man belonging to such auxiliary forces, or of any pensioner.

179. In the application of this Act to Her Majesty's Royal Marines the following modifications shall be made:

- (1.) Nothing in this Act shall prejudice any power of the Admiralty to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any greater authority to command the Royal Marines than they have heretofore used; and a general court-martial for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorised by a warrant from the Admiralty in pursuance of this section, and except that, where such officer or man while subject to this Act is serving beyond the seas with any other portion of the regular forces, and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive), there is not present any officer authorised by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general or other officer, if authorised to convene general courts-martial, may try such officer or man.
- (2.) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces.
- (3.) Any power in relation to the convening of courts-martial, or of authorising an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act Her Majesty may exercise by any warrant or warrants, may be exercised in Her Majesty's name by a warrant or warrants from the Admiralty; and any such warrant may be addressed to any officer to whom any warrant of Her Majesty can be addressed.
- (4.) Any power vested by this Act in Her Majesty in relation to the confirmation of the findings and sentences of courts-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty.
- (5.) Without prejudice to any power of confirmation, the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorised under this section to convene the same, or by any officer otherwise authorised under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces.
- (6.) Any power vested in Her Majesty by this Act in relation to the making of rules, or to any order with respect to pay, or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for Her Majesty, as well as for the Secretary of State.
- (7.) Anything required or authorised by this Act to be done by, to, or before a Secre-

- tary of State, the Commander-in-Chief, Adjutant-General, or Judge Advocate General, may, as regards the Royal Marines, be done by, to, or before the Admiralty; and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of State," "Commander-in-Chief," "Adjutant-General," and "Judge Advocate General," wherever those words occur.
- (8.) Anything required or authorised by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or of any presidency in India, or the general or other officer commanding the forces in any colony or elsewhere, may, as regards the Royal Marines, be done by, to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and, if no such appointment is made, by such Commander-in-Chief or general or other officer.
- (9.) Anything authorised by this Act to be done by Royal warrant may be done, as regards the Royal Marines, by warrant of the Admiralty, and the provisions of this Act with respect to Royal warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act.
- (10.) Anything authorised to be done by the deputy of the Judge Advocate General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty.
- (11.) In the provisions of this Act with respect to evidence, the expression "Queen's Regulations" shall be deemed to include Admiralty Regulations.
- (12.) Nothing in the provisions of this Act relating to the term of enlistment, to the conditions of service, to appointment or transfer, to transfer to the reserve, to the re-engagement or prolongation of service or to forfeiture of service of a soldier of the regular forces, or to the rules for reckoning service for discharge or transfer to the reserve, shall apply to the Royal Marines.
- (13.) A marine on his re-engagement shall make a declaration, either before a justice of the peace or person having under this Act the same authority as a justice of the peace, for the purposes of enlistment, or before a naval officer commanding any ship commissioned by Her Majesty, or before the commanding officer of any battalion or detachment of Royal Marines, in the form from time to time directed by the Admiralty.
- (14.) A man in the Royal Marines shall forfeit his service for fraudulent enlistment and absence without leave in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines.
- (15.) Officers and men of the Royal Marines, during the time that they are borne on the books of any ship commissioned by Her Majesty (otherwise than for service on shore), shall be subject to the Naval Discipline Act, 1866, and to the laws for the government of officers and seamen in the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried and punished for any offence in the same manner as officers and seamen in the Royal Navy:
- Provided that—
- (a.) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having any relations with any such officer or man of the Royal Marines or to any such officer or man if found on shore as a deserter or absentee without leave; and
- (b.) If any such officers or men of the Royal Marines are employed on land, the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment, be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly.
- (16.) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by Her Majesty commits an offence for which he is not amenable to a naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act.
- (17.) The Admiralty may direct that an officer or man of the Royal Marines may be tried under this Act for any offence committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not borne on the books of any ship commissioned by Her Majesty.
- (18.) Where any officer or man of the Royal Marines is on board any ship commissioned by Her Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act, 1866, to such extent and under such regulations as Her Majesty by Order in Council from time to time directs, and so far as she does not so direct, as is for the time being directed by Order in Council with respect to the other regular forces.

(19.) Any naval prison within the meaning of the Naval Discipline Act, 1866, shall be deemed to be included in the definition of a public prison for the purposes of this Act, and the Admiralty shall not have any authority to establish any military prison under this Act.

(20.) In this section the expression "Admiralty" means the Lord High Admiral or the Commissioners for executing the office of the Lord High Admiral for the time being, or any two of them.

(21.) The expression "man of the Royal Marines" includes a non-commissioned officer of the Royal Marines.

180. (1.) In the application of this Act to Her Majesty's forces when serving in India the following modification shall be made:

A court-martial may take the same proceedings for the punishment of a person not subject to military law who, in any part of India, commits any offence as a witness before a court-martial, or is guilty of a contempt of a court-martial, as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.

(2.) In the application of this Act to Her Majesty's Indian forces the following modifications shall be made:

(a.) Nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers or followers in Her Majesty's Indian forces, being natives of India; and on the trial of all offences committed by any such native officer, soldier, or follower, reference shall be had to the Indian military law for such native officers, soldiers, or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act.

(b.) For the purposes of this Act the expression "Indian military law" means the Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force under the authority of the Government of India; and such articles or other matters shall extend to such native officers, soldiers, and followers wherever they are serving.

(c.) The Governor of any presidency in India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to Her Majesty's Indian forces within such presidency.

(d.) An officer belonging to Her Majesty's Indian forces who thinks himself wronged

by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, may complain to the Commander-in-Chief in the presidency to which such officer belongs, who shall cause his complaint to be inquired into, and thereupon report to the Governor of such presidency in order to receive the further directions of that Governor.

(e.) A court-martial may sentence an officer of the Indian staff corps to forfeit all or any part of his army or staff service, or all or any part of both.

(f.) The Governor of any of the presidencies in India may reduce any warrant officer not holding an honorary commission, who is serving in or belonging to such presidency, to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately previous to his appointment to be a warrant officer.

(g.) The provisions of this Act relating to warrant officers not holding honorary commissions shall apply to hospital apprentices in India although not appointed by warrant.

(h.) Part two of this Act shall not apply to Her Majesty's Indian forces, but persons may be enlisted and attested in India for medical service or for other special service in Her Majesty's Indian forces for such periods, by such persons, and in such manner as may be from time to time authorised by the Governor-General of India.

(3.) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment.

181. (1.) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of Her Majesty's auxiliary forces, except so far as such person enlists or attempts to enlist in the regular forces, and except so far as the said provisions may be applied by any other Act.

(2.) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces.

(3.) The provisions of this Act with respect to billeting and impressment of carriages shall apply to Her Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification:

(4.) An order issued and signed as a route

or an order signed by the officer commanding the battalion of militia, or the battalion or corps of yeomanry, or volunteers, shall be substituted for a route,—

- (a.) In the case of any militiaman attending for his preliminary training; and
- (b.) In the case of any militia officer, non-commissioned officer, or man, assembled for training and exercise at the place in the United Kingdom appointed by Her Majesty in that behalf; and
- (c.) In the case of any militia officer, non-commissioned officer, or man, embodied under an order of Her Majesty, who has joined his corps at the place appointed for his assembling; and
- (d.) In the case of any officer, non-commissioned officer, or man, of the yeomanry, or volunteers attending at the place at which his corps is required to assemble; and an order to billet such officer, non-commissioned officer, or man, purporting to be signed in manner required by this Act in the case of a route or by the officer commanding a battalion of militia, or a battalion or corps of yeomanry, or volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man of the militia, yeomanry, or volunteers, shall be a sufficient authority to such officer, non-commissioned officer, or man, to demand billets, and when produced by an officer, non-commissioned officer, or man to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man producing the same to demand billets in accordance with the order.

(5.) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold the office of sheriff, mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which he belongs being assembled for annual training at the time of such nomination or election, or during the time of his tenure of office.

(6.) When a member of the volunteers, being a non-commissioned officer or private, is subject to military law, dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act.

182. The provisions of this Act shall apply to a warrant officer not holding an honorary commission in like manner as if he were a non-commissioned officer, subject nevertheless (in addition to the modifications for a non-com-

missioned officer) to the following modifications:

- (1.) He shall not be punished by his commanding officer nor tried by regimental court-martial, nor sentenced by a district court-martial to any punishment not in this section mentioned; and
- (2.) Without prejudice to any other power of a court-martial he may be sentenced by a court-martial other than a regimental court-martial to be dismissed from the service or to be suspended from rank, and pay, and allowances, or any of them, for any period stated by the court-martial, or to be reduced to the bottom or any other place in the list of the rank which he holds, or to be reduced to an inferior class of warrant officer (if any), or if he was originally enlisted as a soldier and transferred to serve as a warrant officer, but not otherwise, to be reduced to a lower grade or to the ranks or to be transferred to a corps in the same arm or branch of the service and in the same regimental rank as that in which he served immediately before his transfer to be warrant officer;
- (3.) A warrant officer reduced to the ranks or remanded to regimental duty in the rank of private shall not be required to serve in the ranks as a soldier;
- (4.) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain.

183. In the application of this Act to a non-commissioned officer the following modifications shall apply:

- (1.) The obligation on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkenness;
- (2.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, and also the Commander-in-Chief of the forces in any presidency in India, may reduce any non-commissioned officer to any lower grade or to the ranks;
- (3.) A non-commissioned officer may be reduced by the sentence of a court-martial to any lower grade or to the ranks, either in addition to or without any other punishment, in respect of an offence;
- (4.) A non-commissioned officer sentenced by court-martial to penal servitude or imprisonment shall be deemed to be reduced to the ranks.

Provided that—

- (a.) An army schoolmaster shall not be liable to be reduced to the ranks, but may nevertheless be sentenced by a court-

martial to penal servitude or imprisonment, or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude or imprisonment, shall be deemed to be dismissed; but

- (b.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, and also the Commander-in-Chief of the forces of any presidency in India, may dismiss an army schoolmaster.
- (c.) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

184. In the application of this Act to persons who do not belong to Her Majesty's forces, the following modifications shall be made:—

(1.) Where an offence has been committed by any person subject to military law who does not belong to Her Majesty's forces, such person may be tried by any description of court-martial other than a regimental court-martial, convened by an officer authorised to convene such description of court-martial, within the limits of whose command the offender may for the time being be, and may be tried and on conviction dealt with and punished accordingly.

(2.) Any person subject to military law who does not belong to Her Majesty's forces shall, for the purposes of this Act relating to offences, be deemed to be under the command of the commanding officer of the corps or portion of a corps (if any) to which he is attached, and if he is not attached to any corps or portion of a corps under the command of any officer who may from the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said general or other officer commanding, but such person shall not be liable to be punished by a commanding officer or by a regimental court-martial.

Provided that a general or other officer commanding shall not place a person under the command of an officer of rank inferior to the official rank of such person if there is present, at the place where such person is, any officer of higher rank under whose command he can be placed.

Saving Provisions.

185. All jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Ireland be vested in the General Prisons Board, and shall be exercised by that board in the manner and subject to the regulations in and under which the jurisdiction and powers of that board are exercised under the General Prisons (Ireland) Act, 1877, and the provisions of this Act with respect to the orders and regulations of the Secretary of State shall apply to the orders and regulations of such board.

186. Nothing in this Act shall affect the application of the Naval Discipline Act, 1866, or any Order in Council made thereunder, to any of Her Majesty's forces when embarked on board any ship commissioned by Her Majesty, and the auxiliary forces shall be deemed to be part of Her Majesty's forces within the meaning of that Act.

Definitions.

187. This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom, subject to the following modifications:

- (1.) The provisions of this Act relating to billeting and the impressment of carriages shall not extend to the Channel Islands and the Isle of Man:
- (2.) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude or imprisonment, and to prisons, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude or imprisonment passed in any of those islands shall be deemed to have been passed in a colony:
- (3.) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies:
- (4.) For the purposes of the provisions of this Act relating to the militia the Isle of Man shall be deemed to be a colony.

188. Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship, any finding and

sentence, so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

189. (1.) In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country.

(2.) Where the governor of a colony in which any of Her Majesty's forces are serving, or if the forces are serving out of Her Majesty's dominions, the general officer commanding such forces, declares at any time or times that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that the forces in the colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that the period mentioned in any one declaration do not exceed three months from the date thereof.

(3.) If at any time during the said period the governor or general officer for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

(4.) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

(5.) The Secretary of State may, if he thinks fit, annul a declaration or renewal purporting to be made in pursuance of this section, with-

out prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect.

190. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them; that is to say,

(1.) The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

(2.) The expression "Lord Lieutenant of Ireland" includes the lords justices or other chief governor or governors of Ireland:

(3.) The expression "Commander-in-Chief" means the field-marshal or other officer commanding in chief Her Majesty's forces for the time being:

(4.) The expression "officer" means an officer commissioned or in pay as an officer in Her Majesty's forces, or any arm, branch, or part thereof; it also includes a person who, by virtue of his commission, is appointed to any department or corps of Her Majesty's forces, or of any arm, branch, or part thereof; it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of Her Majesty's said forces, or of any arm, branch, or part thereof:

Warrant and other officers holding honorary commissions are officers within the meaning of this Act, subject to the exceptions in this Act mentioned:

(5.) The expression "non-commissioned officer" includes an acting non-commissioned officer, and includes an army schoolmaster when not a warrant officer, but save as is in this Act mentioned does not include a warrant officer not holding an honorary commission:

(6.) The expression "soldier" does not include an officer as defined by this Act, but, with the modifications in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer not having an honorary commission and a non-commissioned officer, and every person subject to military law during the time that he is so subject:

(7.) The expression "superior officer," when used in relation to a soldier, includes a warrant officer not holding an honorary commission, and also includes a non-commissioned officer as above defined:

- (8.) The expressions "regular forces" and "Her Majesty's regular forces" mean officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to Her Majesty in any part of the world, including, subject to the modifications in this Act mentioned, the Royal Marines and Her Majesty's Indian forces, and the Royal Malta Fencible Artillery, and subject to this qualification that when the reserve forces are subject to military law such forces become during the period of their being so subject part of the regular forces:
- (9.) The expression "reserve forces" means the army reserve force and the militia reserve force:
- (10.) The expression "the army reserve force" means the reserve force established under the Reserve Force Act, 1867, and any Act amending the same:
- (11.) The expression "the militia reserve force" means the men enlisted from time to time under the Militia Reserve Act, 1867, and any Act amending the same:
- (12.) The expression "auxiliary forces" means the militia, the yeomanry, and the volunteers:
- (13.) The expression "militia" includes the general and the local militia:
- (14.) The expression "volunteers and volunteer forces" includes the Honourable Artillery Company of London:
- (15.) The expression "corps"—
- (A.) In the case of Her Majesty's regular forces—
- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal warrant to be a corps for the purpose of this Act, and is a body formed by Her Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the regular forces, and in either case with or without the whole or any part of the permanent staff of any of the auxiliary forces not included in such military body; and
- (ii.) Means the Royal Marine forces, in this Act referred to as the Royal Marines; and also
- (iii.) Means the Army Service Corps, the Army Hospital Corps, and any other portion of Her Majesty's regular forces, by whatever name called, which is declared by Royal warrant to be a corps for the purposes of this Act; and also
- (iv.) Means any other portion of Her Majesty's regular forces employed on any service and not attached to any corps as above defined;
- (v.) and any reference in Part II. of this Act to a corps of the regular forces shall be deemed to refer to any such military body as is herein-before defined to form a corps; and
- (B.) In the case of Her Majesty's auxiliary forces—
- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal warrant to be a corps for the purposes of this Act, and is a body formed by Her Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the auxiliary forces, and either inclusive or exclusive of the whole or any part of the permanent staff of any part of the auxiliary forces; and
- (ii.) Means any other portion of Her Majesty's auxiliary forces employed in any service, and not attached to any corps as above defined:
- (16.) The expression "battalion" in the application of this Act to cavalry, artillery, or engineers shall be construed to mean regiment, brigade, or other body into which Her Majesty may have been pleased to divide such cavalry, artillery or engineers.
- (17.) The expression "regimental" means connected with a corps, or with any battalion or other subdivision of a corps:
- (18.) The expression "military decoration" means any medal, clasp, good-conduct badge, or decoration:
- (19.) The expression "military reward" means any gratuity or annuity for long service or good conduct; it also includes any good-conduct pay or pension and any other military pecuniary reward:
- (20.) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates:
- (21.) The expression "India" means any territories the government of which is vested in Her Majesty by or in pursuance of the Act of the session of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter one hundred and six, intituled "An Act for the better government of India," and the Acts amending the same, and also any territories in India under the dominion of any native prince or princess:
- (22.) The expression "native of India" means a person triable and punishable

under Indian military law as defined by this Act:

- (23.) The expression "colony" means for the purposes of this Act Cyprus and any part of Her Majesty's dominions, exclusive of the United Kingdom, the Channel Islands, and the Isle of Man, and India, and all territories and places being part of Her Majesty's dominions which are under one legislature shall be deemed for the purposes of this Act to constitute one colony; and where there are local legislatures as well as a central legislature the expression "legislature" means the central legislature only:
- (24.) The expression "foreign country" means any place which is not situate in the United Kingdom, a colony, or India, as above defined and is not on the high seas:
- (25.) The expression "beyond the seas" means out of the United Kingdom, the Channel Islands, and Isle of Man; and the expression "station beyond the seas" includes any place where any of Her Majesty's forces are serving out of the United Kingdom, the Channel Islands, and Isle of Man:
- (26.) The expression "governor-general" in its application to India means the Governor-General of India in Council:
- (27.) The expression "governor" as respects "the presidency of Bengal" means the Governor-General of India in Council, and as respects the presidencies of Madras and Bombay means the Governor in Council of the presidency, and in its application to a colony includes the lieutenant-governor or other officer administering the government of the colony:
- (28.) The expression "oath" and "swear," and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath:
- (29.) The expression "superior court," in the United Kingdom, means Her Majesty's High Court of Justice in England, the Court of Session in Scotland, and Her Majesty's High Court of Justice at Dublin:
- (30.) The expression "supreme court" means, as regards India, any high court or any chief court; and the expression "court of superior jurisdiction," as regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England:
- (31.) The expression "civil court" means, with respect to any crime or offence, a

court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction:

- (32.) The expression "prescribed" means prescribed by any rules of procedure made in pursuance of this Act:
- (33.) The expression "misdemeanor," as far as regards Scotland, means a crime or offence, and so far as regards India, means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court:
- (34.) The expression "Summary Jurisdiction Acts"—
 - (a.) As regards England, has the same meaning as in the Summary Jurisdiction Act, 1879;
 - (b.) As regards Scotland, means the Summary Procedure Act, 1864, and any Acts amending the same; and
 - (c.) As regards Ireland, means within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same:
- (35.) The expression "court of summary jurisdiction"—
 - (a.) As regards England has the same meaning as in the Summary Jurisdiction Acts, 1879; and
 - (b.) As regards Ireland means any justice or justices of the peace, police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to; and
 - (c.) As regards Scotland, means the sheriff or sheriff substitute, or any two justices of the peace sitting in open court; or any magistrate or magistrates to whom jurisdiction is given by the Summary Procedure (Scotland) Act, 1864; and
 - (d.) As regards India, a colony, the Channel Islands and Isle of Man, means the court, justices, or magistrates who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable:
- (36.) The expression "court of law" includes a court of summary jurisdiction:
- (37.) The expression "county court judge" includes—
 - (a.) In the case of Scotland, the sheriff or sheriff substitute; and
 - (b.) In the case of Ireland, the judge of the Civil Bill Court:

(38.) The expression "constable" includes a high constable and a commissioner, inspector, or other officer of police :

(39.) The expression "police authority" means the commissioner, commissioners, justices, watch committee, or other authority having the control of a police force :

(40.) The expression "horse" includes a mule, and the provisions of this Act shall apply to any beast of whatever description, used for burden or draught or for carrying persons in like manner as if such beast were included in the expression "horse."

PART VI.

COMMENCEMENT AND APPLICATION OF ACT AND REPEAL.

191. (1.) This Act shall come into force in every place on the day fixed for the commencement in that place of the Regulation of the Forces Act, 1881, and shall continue in force as if a reference to this Act were substituted for the reference to the Army Discipline and Regulation Act, 1879, in the Army Discipline and Regulation (Annual) Act, 1881, and that Act shall be construed accordingly.

(2.) Any warrant, order, rule, or regulation under this Act, may be made at any time after the passing thereof, so that the same do not take effect until the commencement thereof.

(3.) Any reference in any Act, regulation, rule, order, warrant, charge, or document, to the Army Discipline and Regulation Act, 1879, or any enactment repealed by this Act, shall be construed to refer to this Act and to the corresponding enactment of this Act.

192. This Act, while in force, shall apply to all soldiers whether enlisted before or after the commencement of this Act, in like manner as if they were enlisted under this Act, subject as follows :

(1.) A soldier enlisted before the commencement of this Act may, when on service beyond the seas, be detained in army service after the time at which he would otherwise be entitled to be transferred to the reserve by the same authority and for the same period by and for which he may be detained under this Act while a state of war exists.

(2.) In the case of soldiers enlisted or re-engaged before the commencement of the Army Discipline and Regulation Act, 1879, who have not consented to the

application to them of the provisions of Part Two of that Act, Part Two of this Act shall nevertheless, so far as is consistent with the tenor thereof, apply to such soldiers (in this section referred to as old soldiers) but subject to the exceptions provided by this section.

(3.) The following provisions, namely,—

(a.) The whole of section seventy-nine (which section relates to reckoning and forfeiture of service);

(b.) So much of section eighty-seven as allows a soldier to be detained in service otherwise than while a state of war exists or while he is on service beyond the seas;

(c.) So much of section eighty-eight as relates to any person continuing in army service for a period during which his service may be prolonged; and

(d.) The whole of section eighty-nine (which section relates to the power to transfer a soldier to the reserve before the expiration of his term of army service),

shall not apply without his consent to any such old soldier.

(4.) Any re-engagement entered into by a soldier at any time since the commencement of the Army Discipline and Regulation Act, 1879, shall be deemed to be a consent by him to the application to him of the above-named provisions; and any old soldier who, after the commencement of this Act, extends his army service for all or any part of the residue of the unexpired term of his original enlistment, or gives notice to his commanding officer of his desire to continue in Her Majesty's service, shall be deemed to have consented to the application to him of the above-named provisions.

(5.) For the purpose of discharge or of transfer to the reserve, the service of any old soldier, to whom section seventy-nine of this Act does not apply, shall be reckoned in accordance with the enactments in accordance with which it would have been reckoned if the Army Acts, 1879 and 1881, and this Act had not passed;

Provided that such service may with the consent of the soldier and the approval of the competent military authority, as defined by Part Two of this Act be reckoned from the date of his attestation without any deduction on account of age, imprisonment, desertion, absence without leave, or otherwise, or without deduction on account of any one or more of such matters.

Form of Oath to be taken by a Master whose indentured Labourer in India or a Colony has absconded, and of Justice's Certificate annexed.

I of do make oath, that was bound to me to serve as
an indentured labourer by indenture dated the day of for the term
of years, and that the said did on or about the day of
abscond and quit my service without my consent. Witness my hand at the
day of one thousand eight hundred and

(Signed) A.B.

I hereby certify, &c. [as for apprentice].

SECOND SCHEDULE.

BILLETING.

PART I.

Accommodation to be furnished by Keeper of Victualling House.

A keeper of a victualling house on whom any officer, soldier, or horse is billeted—

- (1.) Shall furnish the officer and soldier with lodging and attendance; and
- (2.) Shall, if required by the soldier, furnish him for every day of the march and for not more than two days, if the soldier is halted at an intermediate place on the march for more than two days, and on the day of arrival at the place of final destination, with one hot meal on each day, the meal to consist of such quantities of diet and small beer as may be from time to time fixed by Her Majesty's regulations, not exceeding one pound and a quarter of meat previous to being dressed, one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, and vinegar, salt, and pepper; and
- (3.) When the soldier is not so entitled to be furnished with a hot meal, shall furnish the soldier with candles, vinegar, and salt, and allow him the use of fire, and the necessary utensils for dressing and eating his meat; and
- (4.) Shall furnish stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw on every day for each horse.

PART II.

Regulations as to Billets.

- (1.) When the troops are on the march the billets given shall, except in case of necessity or of an order of a justice of the peace, be upon victualling houses in or within

one mile from the place mentioned in the route:

- (2.) Care shall always be taken that the billets be made out to the less distant victualling houses in which suitable accommodation can be found before billets are made out for the more distant victualling houses:
- (3.) Except in case of necessity, where horses are billeted each man and his horse shall be billeted on the same victualling house:
- (4.) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number:
- (5.) Except in case of necessity a soldier and his horse shall not be billeted at a greater distance from each other than one hundred yards:
- (6.) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved:
- (7.) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment:
- (8.) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house.

THIRD SCHEDULE.

IMPRESSMENT OF CARRIAGES.

TABLE OF RATES OF PAYMENT FOR CARRIAGES AND ANIMALS.

Carriages and Animals.	Rate per Mile.
<i>In Great Britain.</i>	
A waggon with four or more horses, or a wain with six oxen, or four oxen, and two horses.	One shilling.
A waggon with narrow wheels, or a cart with four horses, carrying not less than fifteen hundredweight.	Ninepence.
Any other cart or carriage, with less than four horses, and not carrying fifteen hundredweight.	Sixpence.
<i>In Ireland.</i>	
For every hundredweight loaded on any wheeled vehicle - -	One halfpenny.

The mileage when reckoned for the purposes of payment shall include the distance from home to the place of starting, and the distance home from the place of discharge.

REGULATIONS AS TO CARRIAGES AND ANIMALS.

(1.) Where the whole distance for which a carriage is furnished is under one mile the payment shall be for a full mile.

(2.) In Ireland, the minimum sum payable for a car shall be threepence, and for a dray, sixpence per mile.

(3.) In Great Britain, when the day's march exceeds fifteen miles, the justice granting his warrant may fix a further reasonable compensation for every mile travelled not exceeding, in respect of each mile, the rate of hire authorised to be charged by this Act; when any such additional compensation is granted, the justice shall insert in his own hand in the warrant the amount thereof.

(4.) In Ireland the payment shall be at the same rate for each hundredweight in excess of the amount which the carriage is liable under this schedule to carry.

(5.) A carriage shall not be required to travel more than twenty-five miles.

(6.) A carriage shall not, except in case of pressing emergency, be required to travel more than one day's march prescribed in the route.

(7.) In Great Britain a carriage shall not be required to carry more than thirty hundredweight.

(8.) In Ireland a carriage shall not be required to carry, if a car, more than six hundredweight, and if a dray more than twelve hundredweight.

(9.) The load for each carriage shall, if required, at the expense of the owner of the carriage, and if the same can be done within a reasonable time without hindrance to Her Majesty's service, be weighed before it is placed in the carriage.

FOURTH SCHEDULE.

FORM OF DESCRIPTIVE RETURN.

DESCRIPTIVE RETURN of _____ who* _____ at _____ on the _____ day
 of _____, and was committed to confinement at _____ on the _____ day
 of _____ as a deserter [or absentee without leave] from the _____ Bn. of the
 Regiment of _____

* After the word "who," to be inserted either the words "was apprehended," or "surrendered himself," as the case may be.

Age	-	-	-	-	-	-	-	-	-	
Height	-	-	-	-	-	-	-	-	-	Feet. Inches.
Complexion	-	-	-	-	-	-	-	-	-	
Hair	-	-	-	-	-	-	-	-	-	
Eyes	-	-	-	-	-	-	-	-	-	
Marks	-	-	-	-	-	-	-	-	-	
In uniform or plain clothes	-	-	-	-	-	-	-	-	-	
Probable date and place of attestation	-	-	-	-	-	-	-	-	-	
Probable date of desertion or beginning of absence, and from what place.										
Name, occupation, and address of the person by whom or through whose means the deserter [or absentee without leave] was apprehended and secured.†										
Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner and upon what grounds. The fullest possible details to be given.										

I do hereby certify, that the prisoner has been duly examined before me as to the circumstances herein stated, and as declared in my presence that he‡

_____ the before-mentioned corps,
 and I recommend § _____ for a reward
 of _____ s.

Signature } of com-
 Residence } mitting
 Post Town } magistrate.
 Signature of prisoner.
 Signature of informant.

† It is important for the public service, and for the interest of the deserter or absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the justice in his own handwriting, or, under his direction, by his clerk.

‡ Insert *is or is not a deserter or absentee without leave*, from or belongs or does not belong to, as the case may be.

§ The justice will insert the name of the person to whom the reward is due, and the amount [5s., 10s., 15s., or 20s.,] which, in his opinion, should be granted in this particular case.

Or where the prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming:

I hereby certify that the above-named prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the _____ day of _____ for the purpose of obtaining such evidence from a Secretary of State.

Signature.

Residence.

Post Town.

FIFTH SCHEDULE.

ACTS REPEALED.

Section and Chapter.	Title or Short Title.	Extent of Repeal.
47 Geo. 3. sess. 2. c. 25.	An Act for the more convenient payment of half pay and pensions and other allowances to officers and widows of officers, and the persons upon the Compassionate List.	So much as is unrepealed.
42 & 43 Vict. c. 32.	- The Army Discipline and Regulation (Commencement) Act, 1879.	Section three, section seven, section eight, and the schedule.
42 & 43 Vict. c. 33.	- The Army Discipline and Regulation Act, 1879.	The whole Act, with the exception of section one hundred and seventy-seven.
44 & 45 Vict. c. 9.	- The Army Discipline and Regulation (Annual) Act, 1881.	Sections four to seven, both inclusive.
44 & 45 Vict. c. 57.	- The Regulation of the Forces Act, 1881.	Part II., with the exception of so much of sections thirty-eight and thirty-nine as relates to the auxiliary forces, and of section forty-five. In Part III. section fifty.

CHAP. 59.

Statute Law Revision and Civil Procedure Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extent.*
3. *Repeal of enactments in schedule.*
4. *Savings as to repealed enactments.*
5. *Abolished procedure, &c. not revived.*
6. *Extension of powers in Judicature Acts to make rules of court.*

SCHEDULE.

An Act for promoting the revision of the Statute Law by repealing various enactments chiefly relating to Civil Procedure or matters connected therewith, and for amending in some respects the law relating to Civil Procedure. (27th August 1881.)

WHEREAS with a view to the revision of the statute law it is expedient that various enactments (mentioned in the schedule to this Act) which chiefly relate to civil procedure or matters connected therewith, and which may be regarded as spent, or have ceased to be in force otherwise than by express and specific repeal by Parliament, or have, by lapse of time and change of circumstances, become unnecessary, or the subject-matter whereof is provided for by or under the Supreme Court of Judicature Act, 1873, and the Acts amending it, or for other reasons may properly be repealed, be now expressly and specifically repealed:

And whereas it is expedient that in some respects the law relating to civil procedure be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Statute Law Revision and Civil Procedure Act, 1881.

2. This Act does not extend to Scotland or Ireland.

3. The enactments described in the schedule to this Act are hereby repealed, subject to the exceptions and qualifications mentioned in this Act and in that schedule.

4. The repeal effected by this Act shall not affect—

(a.) Anything done or suffered before the

passing of this Act under any enactment repealed by this Act; or

(b.) Any jurisdiction or principle or rule of law or equity established or confirmed, or right or privilege acquired, or duty or liability imposed or incurred, or compensation secured by or under any enactment repealed by this Act; or

(c.) In particular, any power to issue commissions of assize, oyer and terminer, or gaol delivery, or other like commissions, or any jurisdiction or power under or incidental to any such commission, or any jurisdiction or power of the Supreme Court of Judicature in England, or of any judge thereof; or

(d.) Any right to any hereditary revenues of the Crown, or any charges thereon; or

(e.) The right of any existing officer or person to any salary, stipend, emolument, or pension; or

(f.) The repeal, confirmation, revival, or perpetuation by any enactment repealed by this Act of any enactment not repealed by this Act; or

(g.) The application or incorporation of any enactment repealed by this Act by or under any enactment not repealed by this Act; or

(h.) The extension to any court by Order in Council of any enactment repealed by this Act.

5. This Act shall not be deemed to revive or restore any jurisdiction, office, duty, drawback, fee, payment, franchise, liberty, custom, right, title, privilege, restriction, exemption, usage, practice, procedure, or other matter or thing not existing or in force at the passing of this Act.

6. The enactments relating to the making of rules of court contained in the Supreme Court of Judicature Act, 1875, and the Acts amending it, shall extend and apply to all matters with respect to which rules of procedure or general orders might have been made under any enactment repealed by this Act, and to all proceedings by or against the Crown.

SCHEDULE.

ENACTMENTS REPEALED.

This Schedule is to be read as referring to the Revised Edition of the Statutes prepared under the direction of the Statute Law Committee, in all cases of statutes included in that edition.

The chapters of the statutes (before the division into separate Acts) are described by the marginal abstracts given in that edition.

The repeal by the present Act of a part of a statute set out or referred to in terms of the translation given in that edition is to operate on the original Latin or Norman French, of which the translation is set out or referred to, as if the original itself were in like manner set out or referred to.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or forming the end of the portion comprised in the description or citation.

20 Hen. 3. c. 1.	-	The Provisions of Merton. Chapter one. Damages to widows on a writ of dower.
52 Hen. 3. c. 3.	-	The Statute of Marlborough. Chapter three. Of resisting the King's officers in replevins. Distresses for services not due.
52 Hen. 3. c. 5.	-	The Statute of Marlborough. Chapter five. Confirmation of the Great Charter. Charter of the Forest.
52 Hen. 3. c. 9.	-	The Statute of Marlborough. Chapter nine. Who shall do suits of Court. Suits of Court by parceners, &c. The tenant's remedy against the lord, distraining for suits not due. The lord's remedy against the tenants, withholding their due suits.
52 Hen. 3. c. 10.	-	The Statute of Marlborough. Chapter ten. Exemptions from attending the sheriffs turns.
52 Hen. 3. c. 21.	-	The Statute of Marlborough. Chapter twenty-one. Sheriff, upon plaint, shall make replevins.
52 Hen. 3. c. 23. in part.	-	The Statute of Marlborough. Chapter twenty-three. Remedy against accountants. Farmers shall do no waste. Remedy thereon. in part; namely,— from "and it is provided" to "make their account."
3 Edw. 1. c. 19.	-	The Statutes of Westminster; the First. Sheriffs, &c. receiving the King's debts shall acquit the debtor. Penalty. Tallies of payment. Shewing of summons.
13 Edw. 1. c. 2.	-	The Statutes of Westminster; the Second. Chapter two. Mischiefs to lords distraining their tenants by replevins. A recordare to remove the plaint out of the county courts. Pledges to prosecute a replevin. Replevin of distress after judgement for return. Writ of second deliverance. Distress irrepleviable.
13 Edw. 1. c. 30.	-	The Statutes of Westminster; the Second. Chapter thirty. Assignment of justices of nisi prius. Adjournment of assises. Inquisitions of trespass, &c. may be determined before justices of nisi prius. The writ of nisi prius. Proceedings after verdict. Assises of darrein presentment and quare impedit shall be ended in their proper counties. Justices shall have their own clerks. Special verdicts. None shall be put in juries unless summoned.
13 Edw. 1. c. 31.	-	The Statutes of Westminster; the Second. Chapter thirty-one. Proceedings on bills of exceptions.
21 Edw. 1.	-	Statute of the Justices of Assise.
27 Edw. 1.	-	The Statute of Fines levied.
28 Edw. 1. c. 16.	-	Articles upon the Charters. Chapter sixteen. False returns.
9 Edw. 2. stat. 2. in part.	-	The Statute of Sheriffs. in part; namely,— from "and that the execution of writs" to end of Statute.

12 Edw. 2. - -	The Statute of York.
Statutes of uncertain date.	The Statutes of the Exchequer, from "And the treasurer and barons" to "the King's own debt."
1 Edw. 3. stat. 1. -	Statute the First.
2 Edw. 3. c. 2. - -	Statute made at Northampton. Chapter two. Pardons for felony. Justices of assise and gaol delivery. Oyers and terminers.
4 Edw. 3. - - -	Statute made at Westminster:
in part.	Except chapter seven.
14 Edw. 3. stat. 1. c. 16.	Statute the First. Chapter sixteen. Nisi prius may be granted before a justice of Common Pleas in a suit in King's Bench. Nisi prius may be granted before a justice of King's Bench in a suit in Common Pleas; or before the Chief Baron of Exchequer if a man of the law; or before justices of assise, and King's serjeants. Justices of nisi prius may give judgement in quare impedit and darrain presentment.
18 Edw. 3. stat. 3. c. 5.	Statute the Third. Chapter five. Prohibitions.
20 Edw. 3. - -	Ordinance for the Justices.
8 Ric. 2. - - -	Statute made at Westminster in the Eighth Year.
11 Ric. 2. - - -	The Statute made at Westminster in the Eleventh year.
12 Ric. 2. c. 10. -	Statute made at Cambridge in the Twelfth year. Chapter ten. Six justices of the peace in each county; Quarterly sessions, &c. Wages of justices and their clerk. No steward, &c. shall be assigned. Judges, &c., need not attend the sessions regularly; in part; namely,—
in part.	the words, "and that no steward of any lord shall be assigned " in any of the said Commissions."
13 Ric. 2. stat. 1. -	Statute of the Thirteenth Year:
in part.	Except chapter one.
7 Hen. 4. c. 3. - -	Statute of the Seventh Year. Chapter three. The rolls of estreats of issues, fines, &c., shall contain particulars of the cause of forfeiture, &c. The Statute 42 Edw. 3. c. 9., touching gathering of Green Wax, confirmed.
34 & 35 Hen. 8. c. 26. -	An Act for certain Ordinances in the King's Dominions and Principality of Wales.
in part.	in part; namely,—
	Sections five to twenty-two, twenty-nine to fifty-two, seventy-three to seventy-seven, seventy-nine, eighty-three, eighty-eight, eighty-nine, ninety-six, ninety-nine, one hundred and three, one hundred and thirteen, one hundred and fourteen, and one hundred and fifteen.
23 Eliz. c. 3. - -	An Act for the reformation of errors in fines and recoveries.
17 Chas. 2. c. 7. - -	An Act for a more speedy and effectual proceeding upon distresses and avowries for rents.
29 Chas. 2. c. 3. -	An Act for Prevention of Frauds and Perjuries;
in part.	in part; namely,—
	Section ten, to "execution shall be sued," and Section seventeen.
12 & 13 Will. 3. c. 2.	An Act for the further Limitation of the Crown, and better securing the rights and liberties of the Subject;
in part.	in part; namely,—
	Section three, from "That after the said limitation shall take " effect as aforesaid, judges commissions" to "remove them."
9 Anne c. 25. - - -	An Act the title whereof begins with the words — "An Act for rendering"—and ends with the words—"in corporations and boroughs";
in part.	in part; namely,—
	Section seven.

5 Geo. 2. c. 27. -	-	An Act to explain, amend, and render more effectual an Act made in the twelfth year of the reign of His late Majesty King George the First [intituled an Act to prevent frivolous and vexatious Arrests].
11 Geo. 2. c. 19. in part.	-	An Act for the more effectual securing the payment of Rents and preventing Frauds by Tenants; in part; namely,— Section twenty-three.
12 Geo. 2. c. 27.	-	<i>An Act the title whereof begins with the words,—</i> An Act for explaining and amending,— <i>and ends with the words,—</i> Justice of Assize in his own country, &c.
43 Geo. 3. c. 161. in part.	-	<i>An Act the title whereof begins with the words,—</i> An Act for repealing,— <i>and ends with the words,—</i> on Commission; in part; namely,— Section ten, from “and where any such dwelling-house” to end of section.
52 Geo. 3. c. 101. in part.	-	An Act to provide a summary remedy in cases of abuses of trusts created for charitable purposes; in part; namely,— Section one, from “and such order shall be final and conclusive unless” to end of section.
1 Will. 4. c. 7. - in part.	-	<i>An Act the title whereof begins with the words,—</i> An Act for the more speedy judgment,— <i>and ends with the words,—</i> in cases of bankruptcy; in part; namely,— Sections four, eight, and nine.
1 Will. 4. c. 21. in part.	-	An Act to improve the proceedings in Prohibition and on Writs of Mandamus; in part; namely,— Section six.
2 & 3 Will. 4. c. 33. in part.	-	An Act to effectuate the service of process issuing from the Courts of Chancery and Exchequer in England and Ireland respectively; in part; namely,— Section one, and the words “of England and,” “England or,” and “respectively” in Section three.
3 & 4 Will. 4. c. 42. in part.	-	An Act for the further amendment of the Law and the better advancement of Justice; in part; namely,— Sections twenty-three, twenty-four, and twenty-five, except as far as those sections may be in force as regards any court other than the Supreme Court of Judicature in England.
5 Vict. c. 5. - in part.	-	An Act to make further provisions for the administration of Justice; in part; namely,— In section five the words “in the form set out in the first schedule to this Act,” section six, and the first schedule.
5 & 6 Vict. c. 54. in part.	-	<i>An Act the title whereof begins with the words,—</i> An Act to amend,— <i>and ends with the words,—</i> time to be limited; in part; namely,— Section eighteen.
6 & 7 Vict. c. 67. in part.	-	An Act to enable parties to sue out and prosecute Writs of Error in certain cases upon the proceedings on Writs of Mandamus; in part; namely,— Section one, from “and it shall be lawful,” to end of section, and section two.
12 & 13 Vict. c. 96. in part.	-	The Admiralty Offences Colonial Act, 1849; in part; namely,— Section five, from “and the word ‘governor’” to end of section.

- 13 & 14 Vict. c. 35. - An Act to diminish the delay and expense of proceedings in the High Court of Chancery in England:
Except sections nineteen to twenty-five.
- 15 & 16 Vict. c. 80. - An Act to abolish the office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said Court;
in part; namely,—
In section fifteen the words “and enrolled,” section twenty-one from “but subject,” and sections fifty-three and fifty-six.
- 15 & 16 Vict. c. 86. - An Act to amend the practice and course of proceeding in the High Court of Chancery;
in part; namely,—
Sections one to ten, twelve to twenty-one, twenty-six to thirty, thirty-six, thirty-seven, forty-nine, fifty-one, fifty-two, and fifty-three, fifty-eight to sixty-two, and schedule.
- 15 & 16 Vict. c. 87. - An Act for the relief of the suitors of the High Court of Chancery;
in part; namely,—
Section five.
- 17 & 18 Vict. c. 78. - An Act to appoint persons to administer oaths, and to substitute stamps in lieu of fees, and for other purposes, in the High Court of Admiralty of England;
in part; namely,—
Section five.
- 17 & 18 Vict. c. 82. - An Act further to improve the administration of justice in the Court of Chancery of the County Palatine of Lancaster;
in part; namely,—
Sections two to five.
- 18 & 19 Vict. c. 45. - An Act for further assimilating the practice in the County Palatine of Lancaster to that of other counties with respect to the trial of issues from the Superior Courts at Westminster.
- 18 & 19 Vict. c. 90. - *An Act the title whereof begins with the words, “An Act for the payment of costs,” and ends with the words, “Court of Exchequer;”*
in part; namely,—
In section three the words “for the Barons of Her Majesty’s Court of Exchequer in England, or any three of them, “and also.”
- 19 & 20 Vict. c. 86. - An Act to abolish the office of Cursitor Baron of the Exchequer.
- 19 & 20 Vict. c. 113. - An Act to provide for taking evidence in Her Majesty’s Dominions in relation to civil and commercial matters pending before foreign tribunals;
in part; namely,—
Section six, from “Provided” to the end of the section.
- 20 & 21 Vict. c. 77. - An Act to amend the law relating to probates and letters of administration in England;
in part; namely,—
Sections five, six, nine, twelve, twenty-five, forty, forty-one, and forty-five.
- 21 & 22 Vict. c. 27. - An Act to amend the course of procedure in the High Court of Chancery, the Court of Chancery in Ireland, and the Court of Chancery of the County Palatine of Lancaster;
in part; namely,—
Sections three, four, six, and seven.
- 21 & 22 Vict. c. 95. - An Act to amend the Act of the twentieth and twenty-first Victoria, chapter seventy-seven;
in part; namely,—
Sections one and two, section six from “and from and after,” to end of section, section thirty-six, and Schedule.
- 22 & 23 Vict. c. 6. - An Act to enable Serjeants, Barristers-at-Law, Attorneys, and Solicitors to practise in the High Court of Admiralty.

- 22 & 23 Vict. c. 21. - An Act to regulate the office of Queen's Remembrancer, and to amend the practice and procedure on the Revenue side of the Court of Exchequer;
in part.
in part; namely,—
Sections nine, ten, eleven, eighteen, nineteen, twenty, twenty-two, twenty-six, and twenty-seven.
- 22 & 23 Vict. c. 59. - Railway Companies Arbitration Act, 1859;
in part.
in part; namely,—
In section twenty-six the words, "and where requisite frame
" for the purpose."
- 23 & 24 Vict. c. 34. - The Petitions of Right Act, 1860;
in part.
in part; namely,—
Section fifteen.
- 23 & 24 Vict. c. 54. - An Act to amend an Act for abolishing certain offices on the Crown side of the Court of Queen's Bench, and for regulating the Crown Office.
- 23 & 24 Vict. c. 127. - An Act to amend the laws relating to Attorneys, Solicitors, Proctors, and Certificated Conveyancers;
in part.
in part; namely,—
Section twenty-five.
- 24 & 25 Vict. c. 10. - The Admiralty Court Act, 1861;
in part.
in part; namely,—
Sections fourteen, fifteen, seventeen, nineteen, twenty, twenty-two, and thirty-two.
- 25 & 26 Vict. c. 42. - The Chancery Regulation Act, 1862;
in part.
Except as far as it may be in force with respect to the Court of Chancery of the County Palatine of Lancaster.
- 25 & 26 Vict. c. 67. - The Declaration of Title Act, 1862;
in part.
in part; namely,—
Sections forty and forty-one, section forty-two, from "and every such" to end of section, and the words "all general rules
" and orders made as aforesaid including" in section forty-three.
- 25 & 26 Vict. c. 89. - The Companies Act, 1862;
in part.
in part; namely,—
In section thirty-five, the words "if a court of common law," and the words "and a writ of error or appeal in the manner
" directed by 'The Common Law Procedure Act, 1854,' shall
" lie";
Section one hundred and seventy.
- 26 & 27 Vict. c. 122. - An Act to enable Her Majesty in Council to make alterations in the Circuits of the Judges;
in part.
in part; namely,—
Section three.
- 28 & 29 Vict. c. 104. - The Crown Suits, &c. Act, 1865;
in part.
in part; namely,—
Sections twenty-six, twenty-eight, and thirty, section fifty-eight, from "and on such judgment" to end of section, sections sixty and sixty-two, and section sixty-three from
" but general rules" to end of section.
- 30 & 31 Vict. c. 64. - An Act to make further provision for the dispatch of Business in the Court of Appeal in Chancery.
- 30 & 31 Vict. c. 68. - An Act to provide for the better despatch of Business in the Chambers of the Judges of the Superior Courts of Common Law.
- 30 & 31 Vict. c. 87. - The Court of Chancery (Officers) Act, 1867;
in part.
in part; namely,—
Sections four and five.
- 30 & 31 Vict. c. 131. - The Companies Act, 1867;
in part.
in part; namely,—
In section twenty, the words "one hundred and seventieth."

31 & 32 Vict. c. 11.	-	An Act to amend an Act to make further provision for the despatch of Business in the Court of Appeal in Chancery.
31 & 32 Vict. c. 40.	-	The Partition Act, 1868;
in part.	-	in part; namely,— Section eleven.
31 & 32 Vict. c. 54.	-	The Judgments Extension Act, 1868;
in part.	-	in part; namely,— In section seven, the words "Westminster and," and "England and," and the word "respectively" wherever it occurs.
33 & 34 Vict. c. 6.	-	An Act to extend the jurisdiction of the Judges of the Superior Courts of Common Law at Westminster.
39 & 40 Vict. c. 66.	-	The Legal Practitioners Act, 1876.
43 & 44 Vict. c. 19.	-	The Taxes Management Act, 1880;
in part.	-	in part; namely,— In section fifty-nine, subsection (2) (b.), the words "and all such orders shall be final and conclusive on all parties;" in subsection (2) (d.) of the same section, the words "of the High Court" after the word "orders;" subsection (2) (e.) of the same section; and in subsection (4) of the same section the words "therein referred to." In the third schedule, containing enactments repealed, in the entry of 43 Geo. 3. c. 161., the word "sixty;" which section sixty is hereby revived, as from its repeal in that schedule, to the extent to which it was in force at that repeal.

CHAP. 60.

Newspaper Libel and Registration Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Interpretation.*
2. *Newspaper reports of certain meetings privileged.*
3. *No prosecution for newspaper libel without fiat of Attorney General.*
4. *Inquiry by court of summary jurisdiction as to libel being for public benefit or being true.*
5. *Provision as to summary conviction for libel.*
6. 22 & 23 Vict. c. 17. *made applicable to this Act.*
7. *Board of Trade may authorise registration of the names of only a portion of the proprietors of a newspaper.*
8. *Register of newspaper proprietors to be established.*
9. *Annual returns to be made.*
10. *Penalty for omission to make annual returns.*
11. *Power to party to make return.*
12. *Penalty for wilful misrepresentation in or omission from return.*
13. *Registrar to enter returns in register.*
14. *Fees payable for registrar's services.*
15. *Copies of entries in and extracts from register to be evidence.*
16. *Recovery of penalties and enforcement of orders.*
17. *Definitions.*
18. *Provisions as to registration of newspaper proprietors not to apply to newspaper belonging to a joint stock company.*
19. *Act not to extend to Scotland.*
20. *Short title.*

SCHEDULES.

An Act to amend the Law of Newspaper Libel, and to provide for the Registration of Newspaper Proprietors.
(27th August 1881.)

WHEREAS it is expedient to amend the law affecting civil actions and criminal prosecutions for newspaper libel:

And whereas it is also expedient to provide for the registration of newspaper proprietors:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words and phrases herein-after mentioned shall have and include the meanings following; (that is to say,)

The word "registrar" shall mean in England the registrar for the time being of joint stock companies, or such person as the Board of Trade may for the time being authorise in that behalf, and in Ireland the assistant registrar for the time being of joint stock companies for Ireland, or such person as the Board of Trade may for the time being authorise in that behalf.

The phrase "registry office" shall mean the principal office for the time being of the registrar in England or Ireland, as the case may be, or such other office as the Board of Trade may from time to time appoint.

The word "newspaper" shall mean any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers.

Also any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements.

The word "occupation" when applied to any person shall mean his trade or following, and if none, then his rank or usual title, as esquire, gentleman.

The phrase "place of residence" shall include the street, square, or place where the person to whom it refers shall reside, and the number (if any) or other designation of the house in which he shall so reside.

The word "proprietor" shall mean and include as well the sole proprietor of any newspaper, as also in the case of a divided proprietorship the persons who, as partners or other-

wise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

2. Any report published in any newspaper of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit; provided always, that the protection intended to be afforded by this section shall not be available as a defence in any proceeding, if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff or prosecutor.

3. No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein, without the written fiat or allowance of the Director of Public Prosecutions in England or Her Majesty's Attorney General in Ireland being first had and obtained.

4. A court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Act, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment, and the court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

5. If a court of summary jurisdiction upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein is of opinion that though the person charged is shown to have been guilty the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the court shall cause the charge to be reduced into writing

and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury or do you consent to the case being dealt with summarily?" and, if such person assents to the case being dealt with summarily, the court may summarily convict him and adjudge him to pay a fine not exceeding fifty pounds.

Section twenty-seven of the Summary Jurisdiction Act, 1879, shall, so far as is consistent with the tenor thereof, apply to every such proceeding as if it were herein enacted and extended to Ireland, and as if the Summary Jurisdiction Acts were therein referred to instead of the Summary Jurisdiction Act, 1848.

6. Every libel or alleged libel, and every offence under this Act, shall be deemed to be an offence within and subject to the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanors."

7. Where, in the opinion of the Board of Trade, inconvenience would arise or be caused in any case from the registry of the names of all the proprietors of the newspaper (either owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares, or other special circumstances), it shall be lawful for the Board of Trade to authorise the registration of such newspaper in the name or names of some one or more responsible "representative proprietors."

8. A register of the proprietors of newspapers as defined by this Act shall be established under the superintendence of the registrar.

9. It shall be the duty of the printers and publishers for the time being of every newspaper to make or cause to be made to the Registry Office on or before the thirty-first of July one thousand eight hundred and eighty-one, and thereafter annually in the month of July in every year, a return of the following particulars according to the Schedule A. hereunto annexed; that is to say,

(a.) The title of a newspaper:

(b.) The names of all the proprietors of such newspaper together with their respective occupations, places of business (if any), and places of residence.

10. If within the further period of one month after the time herein-before appointed for the making of any return as to any newspaper

such return be not made, then each printer and publisher of such newspaper shall, on conviction thereof, be liable to a penalty not exceeding twenty-five pounds, and also to be directed by a summary order to make a return within a specified time.

11. Any party to a transfer or transmission of or dealing with any share of or interest in any newspaper whereby any person ceases to be a proprietor or any new proprietor is introduced may at any time make or cause to be made to the Registry Office a return according to the Schedule B. hereunto annexed and containing the particulars therein set forth.

12. If any person shall knowingly and wilfully make or cause to be made any return by this Act required or permitted to be made in which shall be inserted or set forth the name of any person as a proprietor of a newspaper who shall not be a proprietor thereof, or in which there shall be any misrepresentation, or from which there shall be any omission in respect of any of the particulars by this Act required to be contained therein whereby such return shall be misleading, or if any proprietor of a newspaper shall knowingly and wilfully permit any such return to be made which shall be misleading as to any of the particulars with reference to his own name, occupation, place of business (if any), or place of residence, then and in every such case every such offender being convicted thereof shall be liable to a penalty not exceeding one hundred pounds.

13. It shall be the duty of the registrar and he is hereby required forthwith to register every return made in conformity with the provisions of this Act in a book to be kept for that purpose at the Registry Office and called "the register of newspaper proprietors," and all persons shall be at liberty to search and inspect the said book from time to time during the hours of business at the Registry Office, and any person may require a copy of any entry in or an extract from the book to be certified by the registrar or his deputy for the time being or under the official seal of the registrar.

14. There shall be paid in respect of the receipt and entry of returns made in conformity with the provisions of this Act, and for the inspection of the register of newspaper proprietors, and for certified copies of any entry therein, and in respect of any other services to be performed by the registrar, such fees (if any) as the Board of Trade with the approval of the Treasury may direct and as they shall deem requisite to defray as well the additional

expenses of the Registry Office caused by the provisions of this Act, as also the further remunerations and salaries (if any) of the registrar, and of any other persons employed under him in the execution of this Act, and such fees shall be dealt with as the Treasury may direct.

15. Every copy of an entry in or extract from the register of newspaper proprietors, purporting to be certified by the registrar or his deputy for the time being, or under the official seal of the registrar, shall be received as conclusive evidence of the contents of the said register of newspaper proprietors, so far as the same appear in such copy or extract without proof of the signature thereto or of the seal of office affixed thereto, and every such certified copy or extract shall in all proceedings, civil or criminal, be accepted as sufficient *prima facie* evidence of all the matters and things thereby appearing, unless and until the contrary thereof be shown.

16. All penalties under this Act may be recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Summary orders under this Act may be made by a court of summary jurisdiction, and enforced in manner provided by section thirty-four of the Summary Jurisdiction Act, 1879; and, for the purposes of this Act, that section shall be deemed to apply to Ireland in the

same manner as if it were re-enacted in this Act.

17. The expression "a court of summary jurisdiction" has in England the meanings assigned to it by the Summary Jurisdiction Act, 1879; and in Ireland means any justice or justices of the peace, stipendiary or other magistrate or magistrates, having jurisdiction under the Summary Jurisdiction Acts.

The expression "Summary Jurisdiction Acts" has as regards England the meanings assigned to it by the Summary Jurisdiction Act, 1879; and as regards Ireland, means within the police district of Dublin metropolis the Acts regulating the powers and duties of justices of the peace for such district, or of the police of that district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

18. The provisions as to the registration of newspaper proprietors contained in this Act shall not apply to the case of any newspaper which belongs to a joint stock company duly incorporated under and subject to the provisions of the Companies Acts, 1862 to 1879.

19. This Act shall not extend to Scotland.

20. This Act may for all purposes be cited as the Newspaper Label and Registration Act, 1881.



The SCHEDULES to which this Act refers.

SCHEDULE A.

Return made pursuant to the Newspaper Label and Registration Act, 1881.

Title of the Newspaper.	Names of the Proprietors.	Occupations of the Proprietors.	Places of business (if any) of the Proprietors.	Places of Residence of the Proprietors.

SCHEDULE B.

Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of Newspaper.	Names of Persons who cease to be Proprietors.	Names of Persons who become Proprietors.	Occupation of new Proprietors.	Places of business (if any) of new Proprietors.	Places of Residence of new Proprietors.

CHAP. 61.

Sunday Closing (Wales) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Premises where intoxicating liquors sold to be closed on Sundays in Wales.*
2. *Application of Licensing Acts.*
3. *Commencement of Act.*
4. *Sale of intoxicating liquors at railway stations.*
5. *Short title.*

An Act to prohibit the Sale of Intoxicating Liquors on Sunday in Wales.
(27th August 1881.)

WHEREAS the provisions in force against the sale of fermented and distilled liquors during certain hours of Sunday have been found to be attended with great public benefits, and it is expedient and the people of Wales are desirous that in the principality of Wales those provisions be extended to the other hours of Sunday:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In the principality of Wales all premises in which intoxicating liquors are sold or ex-

posed for sale by retail shall be closed during the whole of Sunday.

2. The Licensing Acts, 1872-1874, shall apply in the case of any premises closed under this Act as if they had been closed under those Acts.

3. This Act shall commence and come into operation with respect to each division or place in Wales on the day next appointed for the holding of the general annual licensing meeting for that division or place.

4. Nothing in this Act contained shall preclude the sale at any time at a railway station of intoxicating liquors to persons arriving at or departing from such station by railway.

5. This Act may be cited as the Sunday Closing (Wales) Act, 1881.

CHAP. 62.

Veterinary Surgeons Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation.*
3. *Provisions as to register of veterinary surgeons.*
4. *Provision for examination of students in Scotland.*
5. *Correction of register.*
6. *Removal of name from register.*
7. *Restoration of name to register.*
8. *Proceedings for removal or restoration of name.*
9. *Evidence of registration.*
10. *Notice of death of practitioners.*
11. *Penalty on obtaining registration by false representation.*
12. *Penalty for wilful falsification of register.*
13. *Registration of colonial or foreign practitioner with recognised diploma.*
14. *Confirmation of charters.*
15. *Title of existing veterinary practitioners to be registered in College.*
16. *Penalty on false representation as to membership of college.*
17. *Penalty on misrepresentation after 1883 as to qualification to practice and incapacity to recover fee, &c.*
18. *Exercise of powers of Privy Council.*
19. *Summary proceedings for fines and imprisonment.*
20. *Saving rights of the Royal Veterinary College.*

An Act to amend the Law relating to Veterinary Surgeons.

(27th August 1881.)

WHEREAS it is expedient that provision be made to enable persons requiring the aid of a veterinary surgeon for the cure or prevention of diseases in or injuries to horses and other animals, to distinguish between qualified and unqualified practitioners:

Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:

1. This Act may be cited as the Veterinary Surgeons Act 1881.

2. In this Act—

"The Royal College of Veterinary Surgeons" means the Royal College of Veterinary Surgeons incorporated and regulated by a charter and two supplemental charters granted by Her Majesty in the years one thousand eight hundred and forty-four, one thousand eight hundred and seventy-six and one thousand eight hundred and seventy-nine respectively.

"The Registrar" means the Registrar for the time being of the said Royal College.

"Veterinary surgery" means the art and science of veterinary surgery and medicine.

3.—(1.) The register of members of the Royal College of Veterinary Surgeons directed by Her Majesty's said Royal Charter of 1876 to be made and maintained, shall be styled the Register of Veterinary Surgeons, and shall be kept as accurately as possible by the Registrar.

(2.) The Council of that College shall cause correct copies of the said register to be from time to time and at least once a year printed under their direction and published and sold, and such copies shall be admissible in evidence.

4. The Royal College of Veterinary Surgeons shall be bound to make provision in the manner permitted by their charters for the examination in England of the students attending the Royal Veterinary College, and in Scotland of the students attending the several Scotch Veterinary Colleges, and in Ireland whenever a Veterinary College shall be established in that country, and to admit and register such students as have passed the examination as members of the said Royal College under the provisions of such charters and this Act.

5.—(1.) The Registrar shall from time to time insert in the register of veterinary surgeons, any alteration which may come to his knowledge in the name or address of any person registered.

(2.) The Registrar shall remove from the said register the name of every deceased person.

(3.) The Registrar may remove from the said register the name of a person who has ceased to practise, but not (save as herein-after provided) without the consent of that person.

(4.) Where the Registrar has reason to think that any person registered has ceased to practise, the Registrar may send by post to such person a notice inquiring whether or not he has ceased to practise or has changed his residence; and if the Registrar does not within three months after sending the notice receive any answer thereto from such person, the Registrar may within fourteen days after the expiration of the three months send him by post in a registered letter another notice referring to the first notice and stating that no answer thereto has been received, and if the Registrar does not within one month after sending the second notice receive any answer thereto, such person shall for the purpose of the present section be deemed to have ceased to practise and his name may be removed accordingly.

(5.) In the execution of his duties the Registrar shall act on such evidence as in each case appears sufficient.

6. The power conferred by the said Supplemental Charter of 1876 on the Council of the said Royal College, at a meeting of the Council, at which not less than two thirds of the members are present, and with the consent of three fourths of the members so present, but not otherwise, to remove a name from the register of Veterinary Surgeons may be exercised in respect of any person who is at the passing of this Act on that Register, or who is after the passing of this Act placed thereon under the said charters or this Act, but in the following cases only (that is to say), at the request or with the consent of the person whose name is to be removed, or where a name has been incorrectly entered, or has been fraudulently entered or procured to be entered, or where a person registered has, either before or after the passing of this Act, and either before or after his registration, been convicted either in Her Majesty's dominions or elsewhere, of an offence which, if committed in England, would be a misdemeanour or higher offence, or where a person registered is shown to have been guilty, either before or after the passing of this Act, and either before or after his registration, and either in Her Majesty's dominions or elsewhere, of any conduct disgraceful to him in a professional respect.

7.—(1.) Where the Council of the said Royal College have removed the name of any person from the register of veterinary surgeons, the

name of that person shall not be again entered in the register except by a resolution of the Council passed under this section, or by order of a court of competent jurisdiction.

(2.) The Council may by resolution passed by a like proportion of their number as is for the time being required for the removal of a name from the said register, direct the Registrar to restore to the register any name removed therefrom, either without fee or on payment of such fee not exceeding the registration fee as the Council from time to time fix, and the Registrar shall restore the same accordingly.

(3.) The name of any person removed from the said register at the request of such person or with his consent shall, unless it might if not so removed have been removed by order of the Council, be restored to the register, on his application and on payment of such fee not exceeding the registration fee as the Council from time to time fix.

8.—(1.) The Council of the said Royal College shall, for the purpose of exercising in any case the power of removing a name from or of restoring a name to the register of veterinary surgeons, ascertain the facts of the case by a committee of the Council, the powers of the committee being exercisable by not fewer than three members of the committee; and the report of the committee, after hearing the person concerned, if he so desires, shall be for the purpose aforesaid conclusive as to the facts, but so that the Council shall form their own judgment on the case independently of any opinion of the committee.

(2.) If in any case the Council determine to remove the name of any person from the register of veterinary surgeons, or not to restore thereto the name of any person, the Council shall, if required by him, state in writing the reason for that determination, and he may appeal to the Privy Council; and the Privy Council, after communication with the Council of the said Royal College and the appellant, may either dismiss the appeal, or order that Council not to remove the name of the appellant, or to restore his name, as the case may require.

9. A copy of the register of veterinary surgeons for the time being purporting to be printed and published in pursuance of this Act shall be evidence in all cases (until the contrary be made to appear) that the persons therein named are on the register of Veterinary Surgeons; and the absence of the name of any person from such copy shall be evidence (until the contrary be made to appear) that such person is not on that register: Provided that

in the case of any person whose name does not appear in such copy a certified copy under the hand of the Registrar of the entry of the name of such person in the said register shall be evidence that such person is on the said register.

10. Every registrar of deaths in the United Kingdom on receiving notice of the death of any person on the register of Veterinary Surgeons, shall forthwith transmit by post to the Registrar a certificate under his hand of such death, with the particulars of time and place of death; and on the receipt of such certificate the Registrar shall erase the name of such person from the register of Veterinary Surgeons, and shall transmit to the said registrar of deaths the cost of such certificate and transmission.

11. Any person who wilfully procures or attempts to procure himself to be placed on the register of Veterinary Surgeons by making or producing or causing to be made or produced any false or fraudulent declaration certificate or representation either in writing or otherwise, and any person aiding and assisting him therein, shall be deemed guilty in England or in Ireland of a misdemeanour and in Scotland of a crime or offence punishable by fine or imprisonment, and shall on conviction thereof be liable to a fine not exceeding fifty pounds or to be imprisoned with or without hard labour for any term not exceeding twelve months.

12. If the Registrar wilfully makes or causes to be made any falsification in any matter relating to the register of veterinary surgeons he shall be deemed guilty of a misdemeanour, and shall be liable to a fine not exceeding fifty pounds, or to be imprisoned with or without hard labour for any term not exceeding twelve months.

13.—(1.) Where a person shows that he holds some recognised veterinary diploma granted to him in a British possession, and either that the grant of such diploma occurred when he was not domiciled in the United Kingdom, or in the course of a period of not less than five years during which he resided out of the United Kingdom, or, if he was practising veterinary surgery in the United Kingdom at the passing of this Act, that he has practised veterinary surgery for not less than ten years, either in the United Kingdom or elsewhere, he shall upon payment of the registration fee be entitled without examination in the United Kingdom to be registered as a colonial practitioner in the register of veterinary surgeons

and to become to all intents a member of the said Royal College.

(2.) Where a person shows that he obtained some recognised veterinary diploma granted in a foreign country, and either that he is not a British subject, or, that if a British subject he has practised veterinary surgery for more than ten years elsewhere than in the United Kingdom, or if he was practising veterinary surgery in the United Kingdom at the passing of this Act for not less than ten years, either in the United Kingdom or elsewhere, and either continues to hold that diploma or has not been deprived thereof for any cause which disqualifies him for being registered under this Act, he shall, on payment of the registration fee, be entitled without examination in the United Kingdom to be registered as a foreign practitioner in the register of veterinary surgeons, and to become to all intents a member of the said Royal College.

(3.) For the purposes of this section a veterinary diploma is any diploma, licence, certificate, or other document granted by any university, college, corporation, or other body in respect of veterinary surgery, and includes a licence or authority to a person to practise veterinary surgery granted by any department of or persons acting under the authority of the government of the country or place within or without Her Majesty's Dominions wherein the licence or authority is granted; and a British Possession is any part of Her Majesty's Dominions out of the United Kingdom; and a recognised veterinary diploma is a veterinary diploma recognised for the time being by the Council of the said Royal College as furnishing a sufficient guaranty of the possession of the requisite knowledge and skill for the efficient practice of veterinary surgery, and as entitling the holder thereof to practise veterinary surgery in the British Possession or foreign country wherein the diploma was granted.

(4.) If a person is refused registration as a colonial practitioner, or as a foreign practitioner, the Council of the said Royal College shall, if required by that person, state in writing the reason for that refusal, and if that reason be that the veterinary diploma held or obtained by him is not a recognised veterinary diploma, that person may appeal to the Privy Council, and the Privy Council, after communication with the Council of the said Royal College and the appellant, may either dismiss the appeal or order that Council to recognise that veterinary diploma.

14. The said charters of the Royal College of Veterinary Surgeons are hereby confirmed, and are declared to be and shall be in full force and virtue, except as far as the same are

by this Act altered, or as the same are inconsistent with this Act, but not so as to prevent the making of any amendment thereof, or addition thereto, by any supplemental Royal Charter not being inconsistent with this Act.

15.—(1.) Where at the passing of this Act any person practises and has continuously for not less than five years next before the passing of this Act practised veterinary surgery in the United Kingdom, but is not on the register of veterinary surgeons, he shall be entitled, subject to the provisions of this Act, to be placed on a separate register under the heading of "Existing Practitioners," without examination, on such terms as to payment of fees, and as to other matters, as the Council of the said Royal College, with the approval of the Privy Council, direct.

(2.) On any person applying for registration under this section within one year after the passing of this Act, and thereupon, or within a reasonable time thereafter, producing to the Council of the said Royal College evidence of his title to registration by statutory declarations of himself and of other persons able to testify on his behalf, or such other evidence as that Council reasonably require, he shall be registered under direction of that Council accordingly.

(3.) If a person is refused registration under this section the Council of the said Royal College shall, if required by him, state in writing the reason for that refusal, and he may appeal to the Privy Council; and the Privy Council, after communication with the Council of the said Royal College and the appellant, may either dismiss the appeal or order that Council to register the appellant under this section.

(4.) No person registered under this section shall be deemed to be a member of the said Royal College within the said Charters or this Act.

16. If after the passing of this Act any person not being a fellow or a member of the Royal College of Veterinary Surgeons takes or uses any name, title, addition, or description, by means of initials or letters placed after his name, or otherwise, stating or implying that he is a fellow or a member of the Royal College of Veterinary Surgeons, he shall be liable to a fine not exceeding twenty pounds.

17.—(1.) If after the thirty-first day of December one thousand eight hundred and eighty-three any person, other than a person who for the time being is on the register of veterinary surgeons, or who at the time of the

passing of this Act held the veterinary certificate of the Highland and Agricultural Society of Scotland, takes or uses the title of veterinary surgeon or veterinary practitioner, or any name, title, addition, or description stating that he is a veterinary surgeon or a practitioner of veterinary surgery or of any branch thereof, or is specially qualified to practise the same, he shall be liable to a fine not exceeding twenty pounds.

(2.) From and after the same day a person other than as in this section mentioned shall not be entitled to recover in any court any fee or charge for performing any veterinary operation, or for giving any veterinary attendance or advice, or for acting in any manner as a veterinary surgeon or veterinary practitioner, or for practising in any case veterinary surgery, or any branch thereof.

18.—(1.) All powers vested in the Privy Council by this Act may be exercised by an Order of Council made by two or more of the Lords and others of Her Majesty's Most Honourable Privy Council.

(2.) An order made by the Privy Council under this Act may be made conditionally or unconditionally, and may contain such terms and directions as to the Privy Council seem just.

(3.) The Council of the said Royal College shall forthwith obey any order of the Privy Council under this Act, and observe and fulfil all conditions, terms, and directions therein contained.

19. Fines and imprisonment under this Act may be recovered and imposed summarily that is to say—

in England in manner provided by the Summary Jurisdiction Act 1848 and the Summary Jurisdiction Act 1879 and any Act amending either of those Acts;

in Scotland before the sheriff or sheriff-substitute or two justices in manner provided by the Summary Procedure Act 1864 and any Act amending the same;

in Ireland within the police district of Dublin metropolis in manner directed by the Acts regulating the powers and duties of justices of the peace for such district or of the police of such district, and elsewhere in Ireland before two or more justices of the peace in manner directed by the Petty Sessions (Ireland) Act 1851 and any Act amending the same.

A prosecution under this Act may be instituted by the Council of the Royal College of Veterinary Surgeons but shall not be instituted by a private person without the written consent of the said Council.

20. Nothing in this Act shall affect the charter and supplemental charter granted by Her Majesty to the Royal Veterinary College

in the years 1875 and 1877 respectively, or any of the property, rights, powers, and privileges of that College thereunder.

CHAP. 63.

India Office Auditor Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Pension rights of India Office auditor.*
 2. *Short title.*
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An Act for providing a Superannuation Allowance for the Auditor of the Accounts of the Secretary of State for India in Council and his Assistants.
(27th August 1881.)

WHEREAS by section fifty-two of an Act of the session held in the twenty-first and twenty-second years of Her Majesty, chapter one hundred and six, "for the better Government of India," (herein-after referred to as the Act of 1858,) provision is made for the appointment, and for the payment out of the revenues of India, of an auditor of the accounts of the Secretary of State for India in Council and his assistants:

And whereas by section eighteen of the same Act provision is made for granting superannuation allowances to secretaries, officers, and servants on the establishment of the Secretary of State for India in Council, but the auditor and his assistants are not persons on that establishment, and no provision is made by the Act of 1858, or any other Act for granting superannuation allowances to them, and it is expedient that the law be in this respect amended:

And whereas the existing auditor was appointed to his present office on his resigning a situation in the permanent Civil Service entitling him to superannuation allowance under the Superannuation Act, 1859, and doubts have been entertained whether under these circumstances he has been transferred from his previous employment to his present office within the meaning of the Act twenty-

three and twenty-four Victoria, chapter eighty-nine, and it is expedient that such doubts be removed:

And whereas some of the assistants of the existing auditor have been appointed without having obtained the requisite certificates from the Civil Service Commissioners, such certificates not having been required by law as a condition of their appointment, and their right to a superannuation allowance ought not to be prejudiced by this circumstance:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. The auditor of the accounts of the Secretary of State for India in Council and his assistants, including the persons who hold those offices at the time of the passing of this Act, notwithstanding that some of such last-mentioned persons have not obtained certificates from the Civil Service Commissioners, shall, for the purposes of superannuation allowance, be in the same position as if they were secretaries, officers, or servants appointed on the establishment of the Secretary of State for India in Council under section sixteen of the Act of 1858; and for the above purposes the existing auditor shall be deemed to have been transferred to his present office from the employment previously held by him.

2. This Act may be cited as the India Office Auditor Act, 1881.

CHAP. 64.

Central Criminal Court (Prisons) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*2. *Application to Central Criminal Court district of rules under s. 24. of 40 & 41 Vict. c. 21.*3. *Definitions.*

SCHEDULE.

An Act to remove certain doubts as to the application of section twenty-four of the Prison Act, 1877, and enactments amending the same, to the Central Criminal Court district.

(27th August 1881.)

WHEREAS by section twenty-four of the Prison Act, 1877, it is enacted as follows:

“The Secretary of State may from time to time by any general or special rule appoint in any county a convenient prison or prisons in which prisoners are to be confined before and during trial, or at either of such times, and any prisoner who might, if this Act had not passed, have been lawfully confined in a prison situate within the area of such county may be lawfully confined in any prison or prisons so appointed: Moreover, the Secretary of State may by any general or special rule from time to time appoint any convenient prison or prisons in any adjoining county to which prisoners may be committed for trial, safe custody, or otherwise, and any prisoners may be committed to such prison accordingly.”

And whereas by section three of the Spring Assizes Act, 1879, the Prison Act, 1877, was amended so far as regards the carrying of a judgment into execution in any prison:

And whereas the Secretary of State, in pursuance of the said section of the Prison Act, 1877, has made divers rules relating among others to persons in the Central Criminal Court district, and such rules have been laid before Parliament:

And whereas doubts have arisen with respect to the application of the said sections in the case of persons committed for trial at the Central Criminal Court, and consequently as to the validity of the said rules, so far as relating to such persons, and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Central Criminal Court (Prisons) Act, 1881; and the Central Criminal Court Act, 1834, and this Act may be cited together as the Central Criminal Court Acts, 1834 and 1881.

2. (1.) Any rule made by the Secretary of State either before or after the passing of this Act in pursuance of section twenty-four of the Prison Act, 1877, and of any enactment amending the Prison Act, 1877 shall, notwithstanding anything in the Central Criminal Court Act, 1834, apply, save as otherwise therein mentioned, to prisoners committed for trial or before or during trial at the Central Criminal Court.

(2.) The enactments mentioned in the Schedule to this Act, and any other enactment referring to the gaol of Newgate, shall, save as may be prescribed, be construed to include, and to have heretofore included, the prison or prisons for the time being appointed by a rule of the Secretary of State made in pursuance of the Prison Act, 1877, as a prison or prisons to which prisoners who might otherwise be committed to Newgate may be committed, or in which prisoners triable at the Central Criminal Court are to be confined before and during trial, or at either of such times; and accordingly any commission of gaol delivery under the Central Criminal Court Act, 1834, may, subject to any exceptions specified in such commission, extend to any prison so appointed.

(3.) Any justice of the peace or coroner who commits any person charged with an offence cognisable by the Central Criminal Court may commit such person to the gaol of Newgate or to any prison so for the time being appointed as aforesaid.

(4.) Every prisoner committed for trial for any offence cognisable by the Central Criminal Court shall be brought up for trial at the prescribed time and in the prescribed manner, and, so far as is not prescribed, at the next sitting of the Central Criminal Court in manner provided by the Prison Act 1865 with respect to bringing up prisoners for trial; and section ten and so much of section eleven of the

Central Criminal Court Act 1834 as relates to the removal of prisoners from the gaol of the county of Surrey for trial at the Central Criminal Court, are hereby repealed without prejudice to anything done under those sections.

(5.) Where judgment of death is passed at the Central Criminal Court upon a person convicted of any offence, the judgment may be carried into execution in any prison in the Central Criminal Court district or in the county, if any, where the offence was committed or is supposed to have been committed, which the justice or judge of the said court passing sentence or any other justice or judge of the court subsequently may order, and if no order is made, then in the prison in which the convict is for the time being confined; and such sheriff as is ordered by any justice or judge of the said court, or if no order is made, the sheriff of the county in which the offence was committed or is supposed to have been committed, or if the offence was committed or is supposed to have been committed on the high seas, or if the county in which the offence was committed does not clearly appear, the sheriff of Middlesex, shall be charged with the execution of the judgment; and the sheriff charged with the execution of the judgment shall for that purpose have the same jurisdiction and powers and be subject to the same duties in the prison in which the judgment is to be carried into execution, although such prison is not situate within his county as he has by law with respect to the common gaol of his county or would have had if the Prison Act, 1865, and the Prison Act, 1877, had not passed.

The coroner whose duty it is to hold an

inquest on the bodies of persons dying in any prison, shall hold an inquest in accordance with the Capital Punishment Amendment Act, 1868, on the body of any convict executed in that prison.

So much of section nine of the Central Criminal Court Act, 1834, as relates to a prisoner who has been convicted or attainted, and also section nineteen of the Act of the nineteenth and twentieth years of the reign of Her present Majesty, chapter sixteen, and section eight of the Jurisdiction in Homicides Act, 1862, are hereby repealed without prejudice to anything done under those sections.

(6.) The Secretary of State may from time to time, by any general or special rule made in pursuance of the Prison Act, 1877, provide for any matter directed by this Act to be prescribed, and generally for carrying this Act into effect.

3. The Act of the session of the fourth and fifth years of the reign of King William the Fourth, chapter thirty-six, intituled "An Act for establishing a new Court for the trial of Offences committed in the Metropolis, and parts adjoining," is in this Act referred to and may be cited as the Central Criminal Court Act, 1834.

The district within the limits of the Central Criminal Court Act, 1834, is in this Act referred to, and may in any Act, indictment, or document whatsoever be referred to, as the Central Criminal Court district.

The expression "prescribed" means prescribed by a rule made by the Secretary of State in pursuance of the Prison Act, 1877, as amended by this Act.

SCHEDULE.

ENACTMENTS REFERRED TO.

Session and Chapter.	Title.
4 & 5 Will. 4. c. 36.	An Act for establishing a new Court for the trial of Offences committed in the Metropolis, and parts adjoining.
19 & 20 Vict. c. 16.	An Act to empower the Court of Queen's Bench to order certain offenders to be tried at the Central Criminal Court.
25 & 26 Vict. c. 65.	An Act for the more speedy trial of certain homicides committed by persons subject to the Mutiny Act.

CHAP. 65.

Leases for Schools (Ireland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Interpretation of terms.*
2. *Power of making lease.*
3. *Provision in case of disability.*
4. *Limitation of lease.*
5. *Covenants implied.*
6. *Form of lease.*
7. *Effect of lease.*
8. *Short title.*

An Act to facilitate leases of land for the erection thereon of Schools and Buildings for the promotion of Public Education in Ireland.

(27th August 1881.)

WHEREAS it is expedient to provide greater facility for obtaining leases of land of sufficient duration to enable the erection of schools and teachers residences for the purposes of public education in Ireland :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In the construction of this Act the words "grantor," "lessor," and "person" shall extend to and include any body corporate.

The word "entitled" shall mean entitled either legally or equitably.

The word "settlement" shall mean every assurance or connected set of assurances, whether by articles, agreement, deed, will, Act of Parliament, or otherwise, by which lands are or shall be limited in a course of settlement or be agreed so to be settled.

The words "public education" shall include education provided in return for periodical payments as well as purely gratuitous or free education.

2. Every person herein-after described entitled in possession to any estate or interest herein-after specified in lands in Ireland, or to the receipt of the income thereof, whether or not such estate or interest shall be subject to any mortgage or other incumbrance (provided the mortgagee or incumbrancer shall not be in possession), shall have power to make leases of any part of the said lands (other than the mansion house and demesne or pleasure grounds usually occupied with such mansion

house), and not exceeding in the whole one statute acre for the purposes and periods of time and subject to the covenants and condition herein-after provided (that is to say) :

- (a.) Her Majesty the Queen and her successors and the Commissioners of Woods and Forests :
- (b.) Tenants in fee simple or fee farm, or in tail general or special, or in quasi entail :
- (c.) Tenants for their own lives or *pur autre vie* :
- (d.) Married woman entitled to any estate above described under letters (a.), (b.), and (c.) for their separate use, and whether restrained or not from anticipation :
- (e.) Tenants by the courtesy of England :
- (f.) Husbands seized in right of their wives or by *entireties* with their wives, provided every such wife shall be a concurring party in any lease under their act :
- (g.) Corporations lay, eleemosynary, and collegiate, whether aggregate or sole :
- (h.) Trustees of charities or for public purposes, provided any lease to be made by any such trustees under this Act shall be approved of under the seal of the Commissioners of Charitable Donations and Bequests for Ireland :
- (i.) Trustees under any will or settlement, provided that no lease to be made under this Act by any such trustees shall be valid without the consent in writing of any person whose consent may be requisite under such will or settlement to the exercise of any power of sale or exchange or any leasing power therein contained.

3. In case any person (not being a trustee) who would be entitled to make a lease under this Act shall happen to be under any of the disabilities herein-after mentioned, the power to lease under this Act shall be exercised in his or her name or behalf in the following manner; (that is to say), if an infant, by his or her guardian or guardians, or by the Lord

Chancellor of Ireland, if such person have no guardian; if lunatic or idiot or non compos mentis, then by the committee of the estate, and if there shall be no such committee then by the Lord Chancellor of Ireland: Provided always, that no such lease of land belonging to any infant, lunatic, idiot, or person non compos mentis shall be valid without the consent of the Lord Chancellor of Ireland obtained by a summary petition to him by some person interested.

4. A lease under this Act may be made of any quantity of land not exceeding one acre statute measure for a site for a school or schools and playground, or other accommodation in connexion therewith, or for teachers residences, for any term not exceeding nine hundred years, nor less than ninety-nine years, at a nominal rent.

5. Every such lease shall imply the following covenants, conditions, and agreements as fully as if they were therein expressly inserted on the part of the lessees or grantees in such lease and their successors, or, as the case may be, their heirs, executors, administrators, or assigns, that is to say:

- (1.) Covenant to expend upon the premises demised the sum agreed on as the consideration for the lease within a period to be specified in such lease commencing from the date thereon:
- (2.) To pay the rent, and all taxes and impositions payable on the tenant's part:
- (3.) To repair, maintain, and keep the demised premises and all improvements thereon in good repair during the term:
- (4.) That the said premises shall not be used or applied for any other purposes than those to be expressed in the lease:

Conditions (5) that if the demised premises shall for a period of three years continuously cease to be used for any of the said expressed purposes, it shall be lawful for the lessor, or his, her, or their successors in estate, to re-enter; and (6) that it shall also be lawful for the said lessor, his, her, or their successors in estate, at all times to enter and inspect the premises (and all such implied covenants and conditions shall enure for the benefit of the persons who would, if no such lease had been made, have been entitled for the time being to the possession of the lands therein comprised, or the receipt of any rents thereof).

6. Every lease made under this Act shall be by indenture sealed and delivered in the presence of at least one witness, and a counterpart of such lease shall be executed by the grantees or lessees therein named, and delivered to the lessor or grantor.

7. Every lease made pursuant to this Act shall be effectual to bind the lessor or grantor and his, her, and their successors, heirs, executors, and administrators and assigns, and all persons deriving under the same title or settlement as the said lessor or grantor, and notwithstanding any entail, law, or custom to the contrary, and whether or not there shall be any leasing power contained in any such settlement by deed or will, or belonging or annexed to the estate of such grantor or lessor, but so as not to prejudice or interfere with any such other power.

8. This Act may be cited as the Leases for Schools (Ireland) Act, 1881.

CHAP. 66.

Pollen Fishing (Ireland) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Extension of open season.*
2. *Short title.*

An Act to amend the Law regulating the Close Season for fishing for Pollen in Ireland. (27th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the passing of this Act, the season during which it shall not be lawful to take pollen shall be from the first day of November in each year to the thirty-first day of January in the following year, both days inclusive.

During the open season of the year one thousand eight hundred and eighty-one, in Lough Neagh pollen shall not be fished for or

taken except by such trammel or set-nets as are specified in the byelaw made and published by the Inspectors of Irish Fisheries regulating pollen fishing in Lough Neagh, and dated the twenty-seventh day of April one thousand eight hundred and eighty.

The Inspectors of Irish Fisheries may annually, or at such other intervals as they think fit, from time to time extend the close season fixed by this Act during which pollen may not be lawfully taken. The provisions of the Fisheries (Ireland) Act, 1869, and the Acts incorporated therewith, relative to the powers

of the said Inspectors to regulate the season for the taking of any species of fish, shall be taken to empower the Inspectors at any time, and notwithstanding any enactment to the contrary, from time to time to alter such close season, but not so as to make it shorter than the period fixed by this Act in that behalf, and the said provisions shall apply to the purposes of this Act accordingly.

2. This Act shall extend to Ireland only, and may be cited as the Pollen Fishing (Ireland) Act, 1881.

CHAP. 67.

Petroleum (Hawkers) Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Power to hawk petroleum.*
2. *Regulations for hawking petroleum.*
3. *Modification of conditions of license under 34 & 35 Vict. c. 105.*
4. *Power of constable as to prevention of offences.*
5. *Saving of rights of municipal boroughs.*
6. *Definitions.*
7. *Short title and construction of Act.*

An Act to regulate the hawking of Petroleum and other substances of a like nature. (27th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Any person who is licensed in pursuance of the Petroleum Act, 1871, to keep petroleum to which that Act applies may, subject to the enactments for the time being in force with respect to hawkers and pedlars, hawk such petroleum by himself or his servants.

2. With respect to the hawking of petroleum to which the Petroleum Act, 1871, applies, the following regulations shall be observed:

- (1.) The amount of petroleum conveyed at one time in any one carriage shall not exceed twenty gallons:
- (2.) The petroleum shall be conveyed in a closed vessel so constructed as to be free from leakage:
- (3.) The carriage in which the vessels containing the petroleum are conveyed shall be so ventilated as to prevent any evapora-

tion from the petroleum mixing with the air in or about the carriage in such proportion as to produce or be liable to produce an explosive mixture:

- (4.) Any fire or light or any article of an explosive or highly inflammable nature shall not be brought into or dangerously near to the carriage in which the vessels containing the petroleum are conveyed:
- (5.) The carriage in which the vessels containing the petroleum are conveyed shall be so constructed or fitted that the petroleum cannot escape therefrom in the form of liquid, whether ignited or otherwise:
- (6.) Proper care shall be taken to prevent any petroleum escaping into any part of a house or building, or of the curtilage thereof, or into a drain or sewer:
- (7.) The petroleum shall be stored in some premises licensed for keeping of petroleum and in accordance with the license for such premises both every night and also when the petroleum is not in the course of being hawked:
- (8.) All due precautions shall be taken for the prevention of accidents by fire or explosion, and for preventing unauthorised persons having access to the vessels containing the petroleum, and every person concerned in hawking the petroleum shall

abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of such hawking:

- (9.) No article or substance of an explosive or inflammable character other than petroleum, nor any article liable to cause or communicate fire or explosion, shall be in the carriage while such carriage is being used for the purpose of hawking petroleum:

In the event of any contravention of this section with reference to any petroleum, the petroleum, together with the vessels containing and the carriage conveying the same, shall be liable to be forfeited, and in addition thereto the licensee by whom or by whose servants the petroleum was being hawked shall be liable on summary conviction to a penalty not exceeding twenty pounds.

Provided that—

- (1.) Where some servant of the licensee or other person has in fact committed the offence, such servant or other person shall be liable to the same penalty as if he were the licensee:
- (2.) Where the licensee is charged with a contravention of this section, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if the licensee proves to the satisfaction of the court that he had used due diligence to enforce the execution of this section, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the licensee shall be exempt from any penalty.

Any petroleum other than that to which the Petroleum Act, 1871, applies while in any carriage used for the hawking of petroleum to which the Petroleum Act, 1871, applies, shall for the purposes of this section be deemed to be petroleum to which the Petroleum Act, 1871, applies.

3. Any conditions annexed to a license granted in pursuance of the Petroleum Act,

1871, either before or after the passing of this Act, shall, so far as they are inconsistent with this Act, be void, but save as aforesaid nothing in this Act shall affect the application to a licensee of the provisions of the Petroleum Act, 1871, or of any license granted thereunder.

4. Where a constable or any officer authorised by the local authority has reasonable cause to believe that a contravention of this Act is being committed in relation to any petroleum, he may seize and detain such petroleum and the vessels and carriage containing the same, until some court of summary jurisdiction has determined whether there was or not a contravention of this Act, and section thirteen of the Petroleum Act, 1871, shall apply to such constable and officer as if he were the person named in the warrant mentioned in that section, and as if the seizure were a seizure in pursuance of that section.

5. Nothing in this Act contained shall extend to authorise the hawking of petroleum within the limits of any municipal borough in which, by any lawful authority, such hawking shall have been or may hereafter be forbidden.

6. For the purposes of this Act—

The expression “carriage” includes any carriage, waggon, cart, truck, vehicle, or other means of conveyance by land, in whatever manner the same may be drawn or propelled; and

A person shall be deemed for the purposes of this Act to hawk petroleum if by himself or his servants he goes about carrying petroleum to sell, whether going from town to town or to other men's houses, or selling it in the streets of the place of his residence or otherwise, and whether with or without any horse or other beast bearing or drawing burden.

7. This Act may be cited as the Petroleum (Hawkers) Act, 1881.

This Act shall be construed as one with the Petroleum Acts, 1871 and 1879, and together with those Acts may be cited as the Petroleum Acts, 1871 to 1881.

CHAP. 68.

Supreme Court of Judicature Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Master of the Rolls to be Judge of Appeal only.*

3. *Existing vacancy in Court of Appeal not to be filled up.*
4. *President of Probate Division to be an ex-officio judge of Court of Appeal.*
5. *New judge of High Court instead of Master of the Rolls.*
6. *Judge under 40 & 41 Vict. c. 9.*
7. *Rolls Court chambers and clerks, &c.*
8. *Title of justices.*
9. *Appeals under Divorce Act.*
10. *As to appeal against decrees nisi for dissolution or nullity of marriage.*
11. *Qualification of judges to sit on appeals.*
12. *In cases of urgency, &c. one judge may officiate for another.*
13. *Selection of judges for trial of election petitions.*
14. *Jurisdiction of High Court in registration and election cases.*
15. *Quorum in Court of Criminal Appeal.*
16. *Proceedings with regard to nomination of sheriffs.*
17. *Presentation and swearing of Lord Mayor of London.*
18. *As to fixing sessions of Central Criminal Court.*
19. *Power to make rules under 39 & 40 Vict. c. 59.*
20. *Extension of 32 & 33 Vict. c. 91. s. 14.*
21. *Notice of vacancies in offices of Supreme Court.*
22. *Appointment of district registrars.*
23. *Appointments to keep order, &c. in Royal Courts of Justice.*
24. *Powers as to solicitors.*
25. *Chief Justice of England to have powers of Chief Justice of Common Pleas and Chief Baron of the Exchequer.*
26. *Commissioners for acknowledgments by married women.*
27. *Powers to make rules for practice of county courts.*

An Act to amend the Supreme Court of Judicature Acts; and for other purposes. (27th August 1881.)

WHEREAS it is expedient to amend the constitution of Her Majesty's Court of Appeal, and to make further provision concerning the Supreme Court of Judicature and the officers thereof, and such other matters as are herein-after mentioned:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Supreme Court of Judicature Act, 1881.

2. From and after the passing of this Act the present and every future Master of the Rolls shall cease to be a judge of Her Majesty's High Court of Justice, but shall continue by virtue of his office to be a judge of Her Majesty's Court of Appeal, and shall retain the same rank, title, salary, right of pension, patronage, and powers of appointment or dismissal, and all other powers, privileges, and disqualifications now and heretofore belonging to the said office of Master of the Rolls and all other duties of the said office

except that of a judge of Her Majesty's High Court of Justice: Provided that the present Master of the Rolls shall not by virtue of this Act be subject to any disqualification to which he is not by law now subject, nor shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery; and the existing personal officers of the Master of the Rolls shall continue to be attached to him and be under his authority, and to hold their respective offices upon the same tenure and in the same manner in all respects as if this Act had not passed: Provided also, that any Master of the Rolls to be hereafter appointed shall be under an obligation to go circuits and to act as a commissioner under commissions of assize, or other commissions authorised to be issued in pursuance of the Supreme Court of Judicature Act, 1873, in the same manner in all respects as he would have been under the last-mentioned Act, or any Acts or Act amending the same, if he had continued to be a judge of the Chancery Division of the High Court of Justice.

3. The vacancy now existing among the ordinary judges of the said Court of Appeal shall not be filled up, and the number of ordinary judges of that Court shall henceforth be five.

4. The President for the time being of the Probate, Divorce, and Admiralty Division of

the High Court of Justice shall henceforth be an ex-officio judge of Her Majesty's Court of Appeal with the same powers, and in the same manner in all respects as the other ex-officio judges thereof; he shall not be entitled in the said Court to any precedence over any existing judge to which he would not have been entitled as a judge of the Supreme Court of Judicature if this Act had not passed.

5. It shall be lawful for Her Majesty to supply the vacancy in the High Court of Justice, to be occasioned by the removal therefrom of the Master of the Rolls, by the appointment, immediately after the passing of this Act, and from time to time afterwards, of a judge, who shall be in the same position as if he had been appointed a puisne judge of the said High Court in pursuance of the Judicature Acts, 1873 and 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne judges of the said High Court, and to their duties and tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such judges, and all other provisions relating to such puisne judges, or any of them, with the exception of such provisions as apply to existing judges only, shall apply to the judge appointed in pursuance of this section, in the same manner as they apply to the other puisne judges of the said High Court respectively. The Judge so appointed shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as is in the Supreme Court of Judicature Act, 1873, mentioned.

6. The power given to Her Majesty by the Supreme Court of Judicature Act, 1877, to appoint a judge of the High Court of Justice in addition to the number of judges authorised to be appointed by the Supreme Court of Judicature Acts, 1873 and 1875, may be exercised by Her Majesty from time to time, so as at all times to make due provision for the business of the Chancery Division of the High Court of Justice: Provided that no such appointment shall be made unless or until the number of judges attached for the time being to the Chancery Division of the High Court, other than the Lord Chancellor, is, by death, resignation, or otherwise, reduced below five.

7. The Lord Chancellor shall have power by order under his hand to direct that the court and chambers, heretofore used by the Master of the Rolls as a judge of the Chancery Division of the High Court of Justice, shall

(so long as may be necessary or convenient) be used by such judge of the said Chancery Division of the said High Court as shall be in any such order in that behalf named; and the chief and other clerks, and other officers, heretofore attached to the said court and chambers respectively, shall (subject to any rules or orders of court) be and continue attached to the judge to be named in any such order, and, after such court and chambers shall have ceased to be so used, to the judge to whom the business previously transacted in such court and chambers respectively shall be for the time being assigned.

8. And whereas it is expedient to amend section four of the Supreme Court of Judicature Act, 1877: Be it enacted that the exception of Presidents of Divisions from the enactment that the judges of the High Court of Justice shall be styled justices of the High Court shall not apply to any judge to be hereafter appointed who may be or become President of the Probate, Divorce, and Admiralty Division of the High Court of Justice.

9. All appeals which, under section fifty-five of the Act of the twentieth and twenty-first years of Her present Majesty, chapter eighty-five, or under any other Act, might be brought to the full court established by the said first-mentioned Act, shall henceforth be brought to Her Majesty's Court of Appeal and not to the said full court.

The decision of the Court of Appeal on any question arising under the Acts relating to divorce and matrimonial causes, or to the declaration of legitimacy, shall be final, except where the decision either is upon the grant or refusal of a decree on a petition for dissolution or nullity of marriage, or for a declaration of legitimacy, or is upon a question of law on which the Court of Appeal give leave to appeal; and, save as aforesaid, no appeal shall lie to the House of Lords under the said Acts.

Subject to any order made by the House of Lords, in accordance with the Appellate Jurisdiction Act, 1876, every appeal to the House of Lords against any such decision shall be brought within one month after the decision appealed against is pronounced by the Court of Appeal if the House of Lords is then sitting, or, if not within fourteen days after the House of Lords next sits.

This section, so far as is consistent with the tenor thereof, shall be construed as one with the said Acts.

10. No appeal from an order absolute for dissolution or nullity of marriage shall henceforth lie in favour of any party who, having

had time and opportunity to appeal from the decree nisi on which such order may be founded, shall not have appealed therefrom.

11. A judge who was not present and acting as a member of a divisional court of the High Court of Justice, at the time when any decision which may be appealed from was made, or at the argument of the case decided, shall not, for the purposes of the fourth section of the Supreme Court of Judicature Act, 1875, be deemed to be, or to have been, a member of such divisional court.

12. In any case of urgency arising during the absence from illness or any other cause or during any vacancy in the office of any judge of the High Court of Justice to whom any cause or matter may have been according to the course of the said court or of any division thereof specially assigned, it shall be lawful for any other judge of the said court, who may consent so to do, to hear and dispose of any application for an injunction or other interlocutory order for or on behalf of the judge so absent, or in the place of the judge whose office may have so become vacant.

13. The judges to be placed on the rota for the trial of election petitions in England in each year, under the provisions of the Parliamentary Elections Act, 1868, or any Act amending the same, shall henceforth be selected out of the Judges of the Queen's Bench Division of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and, subject thereto, shall be selected as follows; (that is to say,) the judges of the Queen's Bench Division of the said High Court shall, on or before the fourth day of November in every year, select, by a majority of votes, three of the puisne judges of such Division (none of whom shall be a member of the House of Lords) to be placed on the rota for the trial of election petitions during the ensuing year.

If in any case the judges of the said Division, present at the time of their meeting to make such selection, are equally divided in their choice of any judge to be placed on the rota, the Lord Chief Justice of England, or, in case of his absence, the senior judge then present, shall have a second or casting vote.

The choice of a judge to fill any occasional vacancy upon the rota, or to assist the judge on the rota as an additional judge, shall be made in like manner.

The judges, who at the time of the passing of this Act shall be upon the rota for the trial of election petitions, shall continue upon such

rota until the end of the year for which they have been appointed, in the same manner as if this Act had not passed.

If at the end of the year for which any such judge shall have been appointed, whether before or after the passing of this Act, any trial or other matter shall be pending before him, either alone or together with any other judge, and not concluded, or if, after the conclusion of any such trial or of the hearing of any such matter, judgment shall not have been given thereon, it shall be lawful for every such judge to proceed with and to conclude such pending trial or other matter, and to give judgment thereon, after the end of such year, in the same manner in all respects as if the year for which he was appointed had not expired.

14. The jurisdiction of the High Court of Justice to decide questions of law, upon appeal or otherwise, under the Act of the sixth and seventh years of Her Majesty, chapter eighteen, the County Voters Registration Act, 1865, the Parliamentary Elections Act, 1868, the Corrupt Practices (Municipal Elections) Act, 1872, the Parliamentary and Municipal Registration Act, 1878, or any of the said Acts, or any Act amending the same respectively, shall henceforth be final and conclusive, unless in any case it shall seem fit to the said High Court to give special leave to appeal therefrom to Her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive.

15. The jurisdiction and authority in relation to questions of law arising in criminal trials, which, under section forty-seven of the Supreme Court of Judicature Act, 1873, is now vested in the judges of the High Court of Justice, may be exercised by any five or more of such judges, notwithstanding the abolition of the offices of Lord Chief Justice of the Common Pleas and Lord Chief Baron of the Exchequer; provided that the Lord Chief Justice of England shall always be one of such judges, unless, by writing under his hand or by the certificate in writing of his medical attendant, it shall appear that he is prevented, by illness or otherwise, from being present at any court duly appointed to be held for the purpose aforesaid, in which case the presence of the said Lord Chief Justice at such court shall not be necessary.

16. The proceedings for the ordaining or nominating of sheriffs, directed by an Act passed in the fourteenth year of King Edward the First, intituled "How long a Sheriff shall tarry in his Office," and by another Act

passed in the twenty-fourth year of King George the Second, intituled "An Act for the abbreviation of Michaelmas Term," to take place at the Exchequer, shall henceforth in every year take place in the Queen's Bench Division of the High Court of Justice, at the same time and in the same manner as hath been heretofore accustomed in the Court of Exchequer.

17. The presentation and swearing of the Lord Mayor of the city of London, which has heretofore taken place in the Court of Exchequer at Westminster after every annual election into that office, pursuant to charters granted by Her Majesty's Royal predecessors to the citizens of London, and to the hereinbefore recited Act of King George the Second, shall henceforth take place in the Queen's Bench Division of Her Majesty's High Court of Justice, or before the judges of that Division, at the same time and in the same manner as hath been heretofore accustomed in the Court of Exchequer.

18. The power of making general orders for fixing the times of holding sessions of the Central Criminal Court established by the Act of the fourth and fifth years of King William the Fourth, chapter thirty-six, which by section fifteen of that Act was given to any eight or more of the judges of the Superior Courts of Westminster, may henceforth be exercised from time to time by any four or more of the judges of Her Majesty's High Court of Justice.

19. The power of making Rules of Court, conferred by section seventeen of the Appellate Jurisdiction Act, 1876, upon the several judges therein mentioned, shall henceforth be vested in and exercised by any five or more of the following persons, of whom the Lord Chancellor shall be one; namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, and four other judges of the Supreme Court of Judicature to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein.

20. The provisions of section fourteen of the Courts of Justice (Salaries and Funds) Act, 1869, shall henceforth be applicable to all officers of the Supreme Court of Judicature and all officers in Lunacy in the same manner and subject to the same conditions as is thereby enacted concerning the officers in the Courts

of Chancery, Bankruptcy, and Admiralty: Provided always, that any order to be made by the Treasury as to any officers not heretofore included within that section of the said Act shall be made with the concurrence of the Lord Chancellor, and also in the case of officers who are appointed by any other persons or person than the Lord Chancellor either solely or jointly with the Lord Chancellor, with the concurrence of the persons or person having such power of appointment: Provided also, that no order made under this Act which would not have been heretofore authorised by the said section or otherwise by law shall without his consent apply to any officer holding any office at the time of the commencement of this Act.

21. Upon the occurrence henceforth of any vacancy in any office of the Supreme Court of Judicature notice thereof shall be forthwith given to the Lord Chancellor and also to the Treasury by the senior continuing or surviving officer of the department in which the vacancy shall occur, and no appointment shall be made to fill such vacancy within the period of one month next after the date of such notice without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and the Lord Chancellor may, if it be necessary, make provision for such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office. The word "officer" in this Act shall not include the office of any judge of the Supreme Court of Judicature.

22. And whereas by the Judicature Acts, 1873, 1875, and 1877, and the Supreme Court of Judicature (Officers) Act, 1879, no provision is made for the appointment of district registrars of the High Court of Justice other than persons holding or having held the offices in section sixty of the Supreme Court of Judicature Act, 1873, and section thirteen of the Supreme Court of Judicature Act, 1875, respectively mentioned: Be it enacted, that if on any vacancy in the office of district registrar under the said Acts, or upon the appointment by any Order in Council to be hereafter made of any new district within which there shall be a district registrar (unless by such Order in Council it shall be otherwise directed), it shall appear to the Lord Chancellor, with the concurrence of the Treasury, that from the nature and amount of the business to be transacted by such district registrar it is expedient that such office should be conferred upon a person not so qualified as aforesaid, it shall be lawful for the Lord Chancellor, with the concurrence of the Treasury,

to appoint to such office any solicitor of the Supreme Court of Judicature of not less than five years standing.

A district registrar shall not, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for a party to any proceeding whatsoever in the district registry of which he is registrar.

23. The Lord Chancellor may from time to time, with the concurrence of the Treasury, make regulations with respect to—

- (a.) The appointment, removal, payment, and duties of persons to keep order in the Royal Courts of Justice, provided that no such regulation shall affect any right of appointment enjoyed by any person at the time of the commencement of this Act, without his consent thereto :
- (b.) The appointment, removal, payment, and duties of persons charged with the care and cleaning of the Royal Courts of Justice :
- (c.) Any other matters necessary or incidental to the use or management of the Royal Courts of Justice. Any remuneration payable under this section shall be paid out of money voted by Parliament.

24. The powers which by an Act passed in the session of the sixth and seventh years of Her present Majesty, intitled "An Act for consolidating and amending several of the Laws relating to Attornies and Solicitors practising in England and Wales," and by section fourteen of the Supreme Court of Judicature Act, 1875, and by the Solicitors Act, 1860, and by the Solicitors Act, 1877, and by any Act amending the said Acts respectively, are vested in the Master of the Rolls jointly with the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or with any of them, or jointly with the Presidents of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court, or with any of them, shall henceforth be vested in the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, or (in case of difference) of one of them, and anything required by the said Acts to be done to or before the said Lord Chief Justices and Lord Chief Baron, or the said Presidents jointly with the Master of the Rolls, may be done to or before the Master of the Rolls, the Lord Chancellor, and the Lord Chief Justice of England.

Provision may be made by the Master of the Rolls, with the concurrence of the Lord Chan-

cellor and the Lord Chief Justice of England, or (in case of difference) of one of them, for the care and custody of the Roll of Solicitors after the abolition of the office of clerk of the Petty Bag.

25. Where by any Statute any power is given to or any act is required or authorised to be done by the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, or either of them, either solely or jointly with the Lord Chief Justice of the Queen's Bench or the Lord Chief Justice of England, and either with or without the Lord Chancellor or any judge, officer, or person, such power may henceforth be exercised and such act done by the Lord Chief Justice of England; and where by any Statute the concurrence of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, or either of them, is required for the exercise of any power, or the performance of any act, it shall be sufficient henceforth that the Lord Chief Justice of England shall concur therein.

26. And whereas under the Act of the third and fourth years of King William the Fourth, chapter seventy-four, the Lord Chief Justice of the Court of Common Pleas was empowered to appoint such proper persons as he should think fit to be perpetual commissioners for taking the acknowledgments by married women of deeds to be executed by them as in the same Act provided, and such commissioners were made removable by and at the pleasure of the said Lord Chief Justice; and by divers subsequent Acts provision was made for further and other duties to be performed by such commissioners: And whereas the present Lord Chief Justice of England was before and down to the time of his appointment to that office Lord Chief Justice of the Common Pleas, and after his appointment to be Lord Chief Justice of England no other person was appointed to be Lord Chief Justice of the Common Pleas, and that office has since been abolished: Be it enacted and declared, that every appointment of any person to be a commissioner for taking such acknowledgments and performing such other duties as aforesaid, and every order for the removal of any person from such office of commissioner, which shall have been made by the present Lord Chief Justice of England at any time since his appointment to that office, or shall be hereafter made by the Lord Chief Justice of England for the time being, shall be and be deemed to have been valid and effectual in the law, to all intents and purposes whatsoever, in the same manner as if it had been made by

a Lord Chief Justice of the Common Pleas before the abolition of that office.

27. And whereas it is expedient that the jurisdiction of county courts should be exercised as far as conveniently may be in a manner similar to that of the High Court in the like cases, and doubts have arisen as to the extent of the powers of making rules and orders for regulating the practice of county courts contained in the Act of the nineteenth and twentieth years of Her present Majesty, chapter one hundred and eight, which doubts it is expedient to remove: Be it enacted, that the power of making rules and orders for regulating the practice of county courts contained in section thirty-two of the said last-

mentioned Act shall be deemed to extend to all matters of procedure or practice, or relating to or concerning the effect or operation in law of any procedure or practice, in any cases within the cognizance of county courts, as to which rules of court have been or might lawfully be made by or under the provisions of the Judicature Acts, 1873 and 1875, and the Appellate Jurisdiction Act, 1876, for cases within the cognizance of Her Majesty's High Court of Justice; and any rules heretofore made under the provisions of the said first-mentioned Act, in the manner and with the concurrence thereby required, as to any such matters as aforesaid, shall be deemed to be and to have been to all intents and purposes valid and effectual in law.

CHAP. 69.

Fugitive Offenders Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

PART I.

RETURN OF FUGITIVES.

2. *Liability of fugitive to be apprehended and returned.*
3. *Endorsing of warrant for apprehension of fugitive.*
4. *Provisional warrant for apprehension of fugitive.*
5. *Dealing with fugitive when apprehended.*
6. *Return of fugitive by warrant.*
7. *Discharge of person apprehended if not returned within one month.*
8. *Sending back of persons apprehended if not prosecuted within six months or acquitted.*
9. *Offences to which this part of this Act applies.*
10. *Powers of superior court to discharge fugitive when case frivolous or return unjust.*
11. *Power of Lord Lieutenant in Ireland.*

PART II.

INTER-COLONIAL BACKING OF WARRANTS, AND OFFENCES.

Application of part of Act.

12. *Application of part of Act to group of British possessions.*

Backing of Warrants.

13. *Backing in one British possession of warrant issued in another of same group.*
14. *Return of prisoner apprehended under backed warrant.*
15. *Backing in one British possession of summons, &c. of witnesses issued in another possession of same group.*
16. *Provisional warrant in group of British possessions.*
17. *Discharge of prisoner not returned within one month to British possession of same group.*
18. *Sending back of prisoner not prosecuted or acquitted to British possession of same group.*
19. *Refusal to return prisoner where offence too trivial.*

PART III.

Trial, &c. of Offences.

- 20. *Offences committed on boundary of two adjoining British possessions.*
- 21. *Offences committed on journey between two British possessions.*
- 22. *Trial of offence of false swearing or giving false evidence.*
- 23. *Supplemental provision as to trial of person in any place.*
- 24. *Issue of search warrant.*
- 25. *Removal of prisoner by sea from one place to another.*

PART IV.

SUPPLEMENTAL.

Warrants and Escape.

- 26. *Endorsement of warrant.*
- 27. *Conveyance of fugitives and witnesses.*
- 28. *Escape of prisoner from custody.*

Evidence.

- 29. *Depositions to be evidence, and authentication of depositions and warrants.*

Miscellaneous.

- 30. *Provision as to exercise of jurisdiction by magistrates.*
- 31. *Power as to making and revocation of Orders in Council.*
- 32. *Power of legislature of British possession to pass laws for carrying into effect this Act.*

Application of Act.

- 33. *Application of Act to offences at sea or triable in several parts of Her Majesty's dominions.*
- 34. *Application of Act to convicts.*
- 35. *Application of Act to removal of person triable in more than one part of Her Majesty's dominions.*
- 36. *Application of Act to foreign jurisdiction.*
- 37. *Application of Act to, and execution of warrant in United Kingdom, Channel Islands, and Isle of Man.*
- 38. *Application of Act to past offences.*

Definitions and Repeal.

- 39. *Definition of terms.*
- 40. *Commencement of Act.*
- 41. *Repeal of Act in Schedule.*

SCHEDULE.

An Act to amend the Law with respect to Fugitive Offenders in Her Majesty's Dominions, and for other Purposes connected with the Trial of Offenders.
(27th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. This Act may be cited as the Fugitive Offenders Act, 1881.

PART I.

RETURN OF FUGITIVES.

2. Where a person accused of having committed an offence (to which this part of this Act applies) in one part of Her Majesty's dominions has left that part, such person (in this Act referred to as a fugitive from that part) if found in another part of Her Majesty's dominions, shall be liable to be apprehended and returned in manner provided by this Act to the part from which he is a fugitive.

A fugitive may be so apprehended under an endorsed warrant or a provisional warrant.

2. Where a warrant has been issued in one part

of Her Majesty's dominions for the apprehension of a fugitive from that part, any of the following authorities in another part of Her Majesty's dominions in or on the way to which the fugitive is or is suspected to be; (that is to say,)

- (1.) A judge of a superior court in such part; and
- (2.) In the United Kingdom a Secretary of State and one of the magistrates of the metropolitan police court in Bow Street; and
- (3.) In a British possession the governor of that possession,

if satisfied that the warrant was issued by some person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend the fugitive in the part of Her Majesty's dominions in which it is endorsed, and bring him before a magistrate.

4. A magistrate of any part of Her Majesty's dominions may issue a provisional warrant for the apprehension of a fugitive who is or is suspected of being in or on his way to that part on such information, and under such circumstances, as would in his opinion justify the issue of a warrant if the offence of which the fugitive is accused had been committed within his jurisdiction, and such warrant may be backed and executed accordingly.

A magistrate issuing a provisional warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, if he is in the United Kingdom, to a Secretary of State, and if he is in a British possession, to the governor of that possession, and the Secretary of State or governor may, if he think fit, discharge the person apprehended under such warrant.

5. A fugitive when apprehended shall be brought before a magistrate, who (subject to the provisions of this Act) shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction.

If the endorsed warrant for the apprehension of the fugitive is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) according to the law ordinarily administered by the magistrate, raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, and that the offence is one to which this part of this Act applies, the magistrate shall commit the fugitive to prison to await his return, and shall forthwith send a certificate of the committal and such report of

the case as he may think fit, if in the United Kingdom to a Secretary of State, and if in a British possession to the governor of that possession.

Where the magistrate commits the fugitive to prison he shall inform the fugitive that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus, or other like process.

A fugitive apprehended on a provisional warrant may be from time to time remanded for such reasonable time not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant.

6. Upon the expiration of fifteen days after a fugitive has been committed to prison to await his return, or if a writ of habeas corpus or other like process is issued with reference to such fugitive by a superior court, after the final decision of the court in the case,

(1.) if the fugitive is so committed in the United Kingdom, a Secretary of State; and

(2.) if the fugitive is so committed in a British possession, the governor of that possession,

may, if he thinks it just, by warrant under his hand order that fugitive to be returned to the part of Her Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or some one or more of them, and to be held in custody, and conveyed by sea or otherwise to the said part of Her Majesty's dominions, to be dealt with there in due course of law as if he had been there apprehended, and such warrant shall be forthwith executed according to the tenor thereof.

The governor or other chief officer of any prison, on request of any person having the custody of a fugitive under any such warrant, and on payment or tender of a reasonable amount for expenses, shall receive such fugitive and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

7. If a fugitive who, in pursuance of this part of this Act, has been committed to prison in any part of Her Majesty's dominions to await his return, is not conveyed out of that part within one month after such committal, a superior court, upon application by or on behalf of the fugitive, and upon proof that reasonable notice of the intention to make such application has been given, if the said part is the United Kingdom to a Secretary of

State, and if the said part is a British possession to the governor of the possession, may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody.

8. Where a person accused of an offence and returned in pursuance of this part of this Act to any part of Her Majesty's dominions, either is not prosecuted for the said offence within six months after his arrival in that part, or is acquitted of the said offence, then if that part is the United Kingdom a Secretary of State, and if that part is a British possession the governor of that possession, may, if he think fit, on the request of such person, cause him to be sent back free of cost and with as little delay as possible to the part of Her Majesty's dominions in or on his way to which he was apprehended.

9. This part of this Act shall apply to the following offences, namely, to treason and piracy, and to every offence, whether called felony, misdemeanor, crime, or by any other name, which is for the time being punishable in the part of Her Majesty's dominions in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of twelve months or more, or by any greater punishment; and for the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour.

This part of this Act shall apply to an offence notwithstanding that by the law of the part of Her Majesty's dominions in or on his way to which the fugitive is or is suspected of being it is not an offence, or not an offence to which this part of this Act applies; and all the provisions of this part of this Act, including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in such last-mentioned part of Her Majesty's dominions an offence to which this part of this Act applies.

10. Where it is made to appear to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such court may discharge the fugitive, either absolutely or on bail, or

order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the court seems just.

11. In Ireland the Lord Lieutenant or Lords Justices or other chief governor or governors of Ireland, also the chief secretary of such Lord Lieutenant, may, as well as a Secretary of State, execute any portion of the powers by this part of this Act vested in a Secretary of State.

PART II.

INTER-COLONIAL BACKING OF WARRANTS, AND OFFENCES.

Application of part of Act.

12. This part of this Act shall apply only to those groups of British possessions to which, by reason of their contiguity or otherwise, it may seem expedient to Her Majesty to apply the same.

It shall be lawful for Her Majesty from time to time by Order in Council to direct that this part of this Act shall apply to the group of British possessions mentioned in the Order, and by the same or any subsequent Order to except certain offences from the application of this part of this Act, and to limit the application of this part of this Act by such conditions, exceptions, and qualifications as may be deemed expedient.

Backing of Warrants.

13. Where in a British possession of a group to which this part of this Act applies a warrant has been issued for the apprehension of a person accused of an offence punishable by law in that possession, and such person is or is suspected of being in or on the way to another British possession of the same group, a magistrate in the last-mentioned possession, if satisfied that the warrant was issued by a person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend, within the jurisdiction of the endorsing magistrate, the person named in the warrant, and bring him before the endorsing magistrate or some other magistrate in the same British possession.

14. The magistrate before whom a person so apprehended is brought, if he is satisfied that the warrant is duly authenticated as directed by this Act and was issued by a person having lawful authority to issue the

same, and is satisfied on oath that the prisoner is the person named or otherwise described in the warrant, may order such prisoner to be returned to the British possession in which the warrant was issued, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or any one or more of them, and to be held in custody and conveyed by sea or otherwise into the British possession in which the warrant was issued, there to be dealt with according to law as if he had been there apprehended. Such order for return may be made by warrant under the hand of the magistrate making it, and may be executed according to the tenor thereof.

A magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power to remand and admit to bail a prisoner, as he has in the case of a person apprehended under a warrant issued by him.

15. Where a person required to give evidence on behalf of the prosecutor or defendant on a charge for an offence punishable by law in a British possession of a group to which this part of this Act applies, is or is suspected of being in or on his way to any other British possession of the same group, a judge, magistrate, or other officer who would have lawful authority to issue a summons, requiring the attendance of such witness, if the witness were within his jurisdiction, may issue a summons for the attendance of such witness, and a magistrate in any other British possession of the same group, if satisfied that the summons was issued by some judge, magistrate, or officer having lawful authority as aforesaid, may endorse the summons with his name; and the witness, on service in that possession of the summons, so endorsed, and on payment or tender of a reasonable amount for his expenses, shall obey the summons, and in default shall be liable to be tried and punished either in the possession in which he is served or in the possession in which the summons was issued, and shall be liable to the punishment imposed by the law of the possession in which he is tried for the failure of a witness to obey such a summons. The expression "summons" in this section includes any subpoena or other process for requiring the attendance of a witness.

16. A magistrate in a British possession of a group to which this part of this Act applies, before the endorsement in pursuance of this part of this Act of a warrant for the apprehension of any person, may issue a provisional warrant for the apprehension of that person,

on such information and under such circumstances as would in his opinion justify the issue of a warrant if the offence of which such person is accused were an offence punishable by the law of the said possession, and had been committed within his jurisdiction, and such warrant may be backed and executed accordingly; provided that a person arrested under such provisional warrant shall be discharged unless the original warrant is produced and endorsed within such reasonable time as may under the circumstances seem requisite.

17. If a prisoner in a British possession whose return is authorised in pursuance of this part of this Act is not conveyed out of that possession within one month after the date of the warrant ordering his return, a magistrate or a superior court, upon application by or on behalf of the prisoner, and upon proof that reasonable notice of the intention to make such application has been given to the person holding the warrant and to the chief officer of the police of such possession or of the province or town where the prisoner is in custody, may, unless sufficient cause is shown to the contrary, order such prisoner to be discharged out of custody.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to appeal to a superior court.

18. Where a prisoner accused of an offence is returned in pursuance of this part of this Act to a British possession, and either is not prosecuted for the said offence within six months after his arrival in that possession or is acquitted of the said offence, the governor of that possession, if he thinks fit, may, on the requisition of such person, cause him to be sent back, free of cost, and with as little delay as possible, to the British possession in or on his way to which he was apprehended.

19. Where the return of a prisoner is sought or ordered under this part of this Act, and it is made to appear to a magistrate or to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of such prisoner not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities of communication, and to all the circumstances of the case, be unjust or oppressive, or too severe a punishment, to return the prisoner either at all or until the expiration of a certain period, the court or magistrate may discharge the prisoner either absolutely or on bail, or order that he shall not be returned until after the expiration

of the period named in the order, or may make such other order in the premises as to the magistrate or court seems just.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to an appeal to a superior court.

PART III.

Trial, &c. of Offences.

20. Where two British possessions adjoin, a person accused of an offence committed on or within the distance of five hundred yards from the common boundary of such possessions may be apprehended, tried, and punished in either of such possessions.

21. Where an offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel, whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried in any British possession through a part of which such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of any British possession, a person may be tried for such offence in any British possession of which it is the boundary:

Provided that nothing in this section shall authorise the trial for such offence of a person who is not a British subject, where it is not shown that the offence was committed in a British possession.

22. A person accused of the offence (under whatever name it is known) of swearing or making any false deposition, or of giving or fabricating any false evidence, for the purposes of this Act, may be tried either in the part of Her Majesty's dominions in which such deposition or evidence is used, or in the part in which the same was sworn, made, given, or fabricated, as the justice of the case may require.

23. Where any part of this Act provides for the place of trial of a person accused of an offence, that offence shall, for all purposes of and incidental to the apprehension, trial, and punishment of such person, and of and incidental to any proceedings and matters preliminary, incidental to, or consequential thereon, and of and incidental to the juris-

diction of any court, constable, or officer, with reference to such offence, and to any person accused of such offence, be deemed to have been committed in any place in which the person accused of the offence can be tried for it; and such person may be punished in accordance with the Courts (Colonial) Jurisdiction Act, 1874.

24. Where a warrant for the apprehension of a person accused of an offence has been endorsed in pursuance of any part of this Act in any part of Her Majesty's dominions, or where any part of the Act provides for the place of trial of a person accused of an offence, every court and magistrate of the part in which the warrant is endorsed or the person accused of the offence can be tried shall have the same power of issuing a warrant to search for any property alleged to be stolen or to be otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that court or magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such court or magistrate.

25. Where a person is in legal custody in a British possession either in pursuance of this Act or otherwise, and such person is required to be removed in custody to another place in or belonging to the same British possession, such person, if removed by sea in a vessel belonging to Her Majesty or any of Her Majesty's subjects, shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed; and the provisions of this Act with respect to the retaking of a prisoner who has escaped, and with respect to the trial and punishment of a person guilty of the offence of escaping or attempting to escape, or aiding or attempting to aid a prisoner to escape, shall apply to the case of a prisoner escaping while being lawfully removed as aforesaid, in like manner as if he were being removed in pursuance of a warrant endorsed in pursuance of this Act.

PART IV.

SUPPLEMENTAL.

Warrants and Escape.

26. An endorsement of a warrant in pursuance of this Act shall be signed by the authority endorsing the same, and shall authorise all or any of the persons named in the endorsement, and of the persons to whom the warrant was originally directed, and also every constable,

to execute the warrant within the part of Her Majesty's dominions or place within which such endorsement is by this Act made a sufficient authority, by apprehending the person named in it, and bringing him before some magistrate in the said part or place, whether the magistrate named in the endorsement or some other.

For the purposes of this Act every warrant, summons, subpoena, and process, and every endorsement made in pursuance of this Act thereon, shall remain in force, notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office.

27. Where a fugitive or prisoner is authorised to be returned to any part of Her Majesty's dominions in pursuance of Part One or Part Two of this Act, such fugitive or prisoner may be sent thither in any ship belonging to Her Majesty or to any of her subjects.

For the purpose aforesaid, the authority signing the warrant for the return may order the master of any ship belonging to any subject of Her Majesty bound to the said part of Her Majesty's dominions to receive and afford a passage and subsistence during the voyage to such fugitive or prisoner, and to the person having him in custody, and to the witnesses, so that such master be not required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage.

The said authority shall endorse or cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her as the Board of Trade from time to time require.

Every such master shall, on his ship's arrival in the said part of Her Majesty's dominions, cause such fugitive or prisoner, if he is not in the custody of any person, to be given into the custody of some constable, there to be dealt with according to law.

Every master who fails on payment or tender of a reasonable amount for expenses to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section, shall be liable on summary conviction to a fine not exceeding fifty pounds, which may be recovered in any part of Her Majesty's dominions in like manner as a penalty of the same amount under the Merchant Shipping Act, 1854, and the Acts amending the same.

28. If a prisoner escape, by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or endorsed in pursuance of this Act, he may be retaken in the

same manner as a person accused of a crime against the law of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

A person guilty of the offence of escaping or of attempting to escape, or of aiding or attempting to aid a prisoner to escape, by breach of prison or otherwise, from custody under any warrant issued or endorsed in pursuance of this Act, may be tried in any of the following parts of Her Majesty's dominions, namely, the part to which and the part from which the prisoner is being removed, and the part in which the prisoner escapes, and the part in which the offender is found.

Evidence.

29. A magistrate may take depositions for the purposes of this Act in the absence of a person accused of an offence in like manner as he might take the same if such person were present and accused of the offence before him.

Depositions (whether taken in the absence of the fugitive or otherwise) and copies thereof, and official certificates of or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act.

Provided that nothing in this Act shall authorise the reception of any such depositions, copies, certificates, or documents in evidence against a person upon his trial for an offence.

Warrants and depositions, and copies thereof, and official certificates of or judicial documents stating facts, shall be deemed duly authenticated for the purposes of this Act if they are authenticated in manner provided for the time being by law, or if they purport to be signed by or authenticated by the signature of a judge, magistrate, or officer of the part of Her Majesty's dominions in which the same are issued, taken, or made, and are authenticated either by the oath of some witness, or by being sealed with the official seal of a Secretary of State, or with the public seal of a British possession, or with the official seal of a governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession.

And all courts and magistrates shall take judicial notice of every such seal as is in this section mentioned, and shall admit in evidence without further proof the documents authenticated by it.

Miscellaneous.

30. The jurisdiction under Part One of this Act to hear a case and commit a fugitive to prison to await his return shall be exercised,—

- (1.) In England, by a chief magistrate of the metropolitan police courts or one of the other magistrates of the metropolitan police court at Bow Street; and
- (2.) In Scotland, by the sheriff or sheriff substitute of the county of Edinburgh; and
- (3.) In Ireland, by one of the police magistrates of the Dublin Metropolitan police district; and
- (4.) In a British possession, by any judge, justice of the peace, or other officer having the like jurisdiction as one of the magistrates of the metropolitan police court in Bow Street, or by such other court, judge, or magistrate as may be from time to time provided by an Act or ordinance passed by the legislature of that possession.

If a fugitive is apprehended and brought before a magistrate who has no power to exercise the jurisdiction under this Act in respect of that fugitive, that magistrate shall order the fugitive to be brought before some magistrate having that jurisdiction, and such order shall be obeyed.

31. It shall be lawful for Her Majesty in Council from time to time to make orders for the purposes of this Act, and to revoke and vary any Order so made, and every Order so made shall while it is in force have the same effect as if it were enacted in this Act.

An Order in Council made for the purposes of this Act shall be laid before Parliament as soon as may be after it is made if Parliament is then in session, or if not, as soon as may be after the commencement of the then next session of Parliament.

32. If the legislature of a British possession pass any Act or ordinance—

- (1.) For defining the offences committed in that possession to which this Act or any part thereof is to apply; or
- (2.) For determining the court, judge, magistrate, officer, or person by whom and the manner in which any jurisdiction or power under this Act is to be exercised; or
- (3.) For payment of the costs incurred in returning a fugitive or a prisoner, or in sending him back if not prosecuted or if acquitted, or otherwise in the execution of this Act; or
- (4.) In any manner for the carrying of this Act or any part thereof into effect in that possession,

it shall be lawful for Her Majesty by Order in Council to direct, if it seems to Her Majesty in Council necessary or proper for carrying into

effect the objects of this Act, that such Act or ordinance, or any part thereof, shall with or without modification or alteration be recognised and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of this Act.

Application of Act.

33. Where a person accused of an offence can, by reason of the nature of the offence, or of the place in which it was committed, or otherwise, be, under this Act or otherwise, tried for or in respect of the offence in more than one part of Her Majesty's dominions, a warrant for the apprehension of such person may be issued in any part of Her Majesty's dominions in which he can, if he happens to be there, be tried; and each part of this Act shall as if the offence had been committed in the part of Her Majesty's dominions where such warrant is issued, and such person may be apprehended and returned in pursuance of this Act, notwithstanding that in the place in which he is apprehended a court has jurisdiction to try him:

Provided that if such person is apprehended in the United Kingdom a Secretary of State, and if he is apprehended in a British possession, the governor of such possession, may, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, order such person to be tried in the part of Her Majesty's dominions in which he is apprehended, and in such case any warrant previously issued for his return shall not be executed.

34. Where a person convicted by a court in any part of Her Majesty's dominions of an offence committed either in Her Majesty's dominions or elsewhere, is unlawfully at large before the expiration of his sentence, each part of this Act shall apply to such person, so far as is consistent with the tenor thereof, in like manner as it applies to a person accused of the like offence committed in the part of Her Majesty's dominions in which such person was convicted.

35. Where a person accused of an offence is in custody in some part of Her Majesty's dominions, and the offence is one for or in respect of which, by reason of the nature thereof or of the place in which it was committed or otherwise, a person may under this Act or otherwise be tried in some other part of Her Majesty's dominions, in such case a superior court, and also if such person is in the United Kingdom a Secretary of State, and

if he is in a British possession the governor of that possession, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, may by warrant direct the removal of such offender to some other part of Her Majesty's dominions in which he can be tried, and the offender may be returned, and, if not prosecuted or acquitted, sent back free of cost in like manner as if he were a fugitive returned in pursuance of Part One of this Act, and the warrant were a warrant for the return of such fugitive, and the provisions of this Act shall apply accordingly.

36. It shall be lawful for Her Majesty from time to time by Order in Council to direct that this Act shall apply as if, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession, and to provide for carrying into effect such application.

37. This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and of the United Kingdom, and the United Kingdom and those islands shall be deemed for the purpose of this Act to be one part of Her Majesty's dominions; and a warrant endorsed in pursuance of Part One of this Act may be executed in every place in the United Kingdom and the said islands accordingly.

38. This Act shall apply where an offence is committed before the commencement of this Act, or, in the case of Part Two of this Act, before the application of that part to a British possession or to the offence, in like manner as if such offence had been committed after such commencement or application.

Definitions and Repeal.

39. In this Act, unless the context otherwise requires,—

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

The expression "British possession" means any part of Her Majesty's dominions, exclusive of the United Kingdom, the Channel Islands, and Isle of Man; all territories and places within Her Majesty's dominions which are under one legislature shall be deemed to be one British possession and one part of Her Majesty's dominions:

The expression "legislature," where there are local legislatures as well as a central legislature, means the central legislature only:

The expression "governor" means any person or persons administering the government of a British possession, and includes the governor and lieutenant governor of any part of India:

The expression "constable" means, out of England, any policeman or officer having the like powers and duties as a constable in England:

The expression "magistrate" means, except in Scotland, any justice of the peace, and in Scotland means a sheriff or sheriff substitute, and in the Channel Islands, Isle of Man, and a British possession means any person having authority to issue a warrant for the apprehension of persons accused of offences and to commit such persons for trial:

The expression "offence punishable on indictment" means, as regards India, an offence punishable on a charge or otherwise:

The expression "oath" includes affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing, and the expression "swear" and other words relating to an oath or swearing shall be construed accordingly:

The expression "deposition" includes any affidavit, affirmation, or statement made upon oath as above defined:

The expression "superior court" means:

- (1.) In England, Her Majesty's Court of Appeal and High Court of Justice; and
- (2.) In Scotland, the High Court of Justiciary; and
- (3.) In Ireland, Her Majesty's Court of Appeal and Her Majesty's High Court of Justice at Dublin; and
- (4.) In a British possession, any court having in that possession the like criminal jurisdiction to that which is vested in the High Court of Justice in England, or such Court or judge as may be determined by any Act or ordinance of that possession.

40. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-two, which date is in this Act referred to as the commencement of this Act.

41. The Act specified in the Schedule to this Act is hereby repealed as from the commencement of this Act:

Provided that this repeal shall not affect—

- (a.) Any warrant duly endorsed or issued, nor anything duly done or suffered before the commencement of this Act; nor
- (b.) Any obligation or liability incurred under an enactment hereby repealed; nor
- (c.) Any penalty, forfeiture, or punishment incurred in respect of any offence

committed against any enactment hereby repealed; nor

- (d.) Any legal proceeding or remedy in respect of any such warrant, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such warrant may be endorsed and executed, and any such legal proceeding and remedy may be carried on, as if this Act had not passed.



SCHEDULE.

Year and Chapter.	Title.
6 & 7 Vict. c. 34 - -	An Act for the better apprehension of certain offenders.

CHAP. 70.

Expiring Laws Continuance Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Continuance of Acts in schedule.*

SCHEDULE.

An Act to continue various expiring Laws. (27th August 1881.)

WHEREAS the several Acts mentioned in column one of the schedule to this Act are, to the extent specified in column two of that schedule, limited to expire on the thirty-first day of December one thousand eight hundred and eighty-one:

And whereas it is expedient to provide for the continuance as in this Act mentioned of such Acts, and of the enactments amending the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament

assembled, and by the authority of the same, as follows:

1. This Act may be cited as the *Expiring Laws Continuance Act, 1881.*

2. The Acts mentioned in column one of the schedule to this Act, in so far as they are temporary in their duration, shall, to the extent in column two of the said schedule mentioned, be continued until the thirty-first day of December one thousand eight hundred and eighty-two, and any enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.



SCHEDULE.

1. Original Acts.	2. How far continued.	3. Amending Acts.
(1) 5 & 6 Will. 4. c. 27. Linen, Hempen, Cotton, and other Manufactures (Ireland).	The whole Act so far as it is not repealed.	3 & 4 Vict. c. 91. (except ss. 18 and 23). 5 & 6 Vict. c. 68. 7 & 8 Vict. c. 47. 30 & 31 Vict. c. 60.
(2) 3 & 4 Vict. c. 89. Poor Rates, Stock in Trade Exemption.	The whole Act.	—
(3) 4 & 5 Vict. c. 35. Copyhold, Inclosure, and Tithe Commissioners.	So much as relates to the appointment of and the period for holding office by Commissioners and other officers.	14 & 15 Vict. c. 53. 25 & 26 Vict. c. 73.
(4) 4 & 5 Vict. c. 59. Application of Highway Rates to Turnpike Roads.	The whole Act.	—
(5) 10 & 11 Vict. c. 32. Landed Property Improvement (Ireland).	As to powers of Commissioners.	12 & 13 Vict. c. 59. 13 & 14 Vict. c. 31. 25 & 26 Vict. c. 29. 29 & 30 Vict. c. 40.
(6) 10 & 11 Vict. c. 98. Ecclesiastical Jurisdiction.	As to provisions continued by 21 & 22 Vict. c. 50.	—
(7) 11 & 12 Vict. c. 32. County Cess (Ireland).	The whole Act	20 & 21 Vict. c. 7.
(8) 14 & 15 Vict. c. 104. Episcopal and Capitular Estates Management.	The whole Act so far as it is not repealed.	17 & 18 Vict. c. 116. 21 & 22 Vict. c. 94. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124. 31 & 32 Vict. c. 114. s. 10.
(9) 17 & 18 Vict. c. 102. Corrupt Practices Prevention.	The whole Act so far as it is not repealed.	21 & 22 Vict. c. 87. 26 & 27 Vict. c. 29. 31 & 32 Vict. c. 125.
(10) 23 & 24 Vict. c. 19. Dwellings for Labouring Classes (Ireland).	The whole Act.	—
(11) 24 & 25 Vict. c. 109. Salmon Fishery (England) Act.	As to appointment of inspectors, s. 31.	—
(12) 25 & 26 Vict. c. 97. Salmon Fisheries (Scotland).	As to the powers of Commissioners, &c.	26 & 27 Vict. c. 50. 27 & 28 Vict. c. 118.
(13) 26 & 27 Vict. c. 105. Promissory Notes.	The whole Act.	—

1. Original Acts.	2. How far continued.	3. Amending Acts.
(14) 27 & 28 Vict. c. 20. Promissory Notes and Bills of Exchange (Ireland).	The whole Act.	—
(15) 28 & 29 Vict. c. 46. Militia Ballots Suspension.	The whole Act.	—
(16) 28 & 29 Vict. c. 83. Locomotives on Roads.	The whole Act so far as it is not repealed.	41 & 42 Vict. c. 58. 41 & 42 Vict. c. 77. (Part II.)
(17) 29 & 30 Vict. c. 52. Prosecution Expenses.	The whole Act.	—
(18) 31 & 32 Vict. c. 125. Election Petitions and Corrupt Practices.	The whole Act - -	42 & 43 Vict. c. 75.
(19) 32 & 33 Vict. c. 21. Election Com- missioners Expenses.	The whole Act - -	34 & 35 Vict. c. 61.
(20) 32 & 33 Vict. c. 42. Irish Church	So much as relates to the period for holding office by Commissioners and officers (s. 9).	—
(21) 34 & 35 Vict. c. 87. Sunday Ob- servance Prosecutions.	The whole Act.	—
(22) 35 & 36 Vict. c. 33. Parliamentary and Municipal Elections (Bal- lot).	The whole Act - -	38 & 39 Vict. c. 40. (Municipal Elections.)
(23) 38 & 39 Vict. c. 48. Police Ex- penses.	The whole Act.	—
(24) 38 & 39 Vict. c. 84. Returning Officers Expenses.	The whole Act.	—
(25) 39 & 40 Vict. c. 21. Juries (Ire- land).	The whole Act.	—
(26) 41 & 42 Vict. c. 41. Returning Officers Expenses (Scotland).	The whole Act.	—
(27) 43 Vict. c. 18. Parliamentary Elections.	The whole Act except so far as it continues any other Act.	—

CHAP. 71.

Irish Church Act Amendment Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Dissolution of Church Temporalities Commission. Transfer of property and powers.*
3. *Transfer of officers.*
4. *Account of church funds.*

An Act to make provision for the future administration of the Property and the performance of the Duties vested in the Commissioners of Church Temporalities in Ireland.

(27th August 1881.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Irish Church Act Amendment Act, 1881.

2. On a day to be fixed by the Lord Lieutenant, by Order in Council, the Corporation of the Commissioners of Church Temporalities in Ireland shall, notwithstanding anything contained in any Expiring Laws Continuance Act, be dissolved. Such order shall not be made unless a corporate body under the title of "the Irish Land Commission," to whom the property vested in the Commissioners of Church Temporalities may be transferred under this Act, has previously been constituted by statute.

On the dissolution of the said Corporation the following provisions shall take effect with relation to the property belonging to them as such Corporation, and with respect to their powers under the Irish Church Act, 1869 :

(1.) All lands, tenements, and hereditaments, and every estate and interest therein, and all fixtures and furniture belonging to the Commissioners of Church Temporalities in Ireland in their capacity as such Commissioners, shall, without any conveyance or assignment thereof, be vested in the Irish Land Commission, to be held for the same uses, trusts, and purposes for which the same were held respectively previous to the passing of this Act. The house No. 24, Upper Merrion Street, in the city of Dublin, now occupied as an office by the Commissioners of Church Temporalities, and all fixtures and furniture therein, may be used by the Irish Land Commission for any of the purposes for which the said

Land Commission is constituted. The said Irish Land Commission shall be entitled to the benefits of all covenants, conditions, or agreements in relation to the premises so transferred, express or implied, and to maintain all actions, suits, and other proceedings grounded thereon in their own name; and the said Commission shall in like manner be liable to all payments, reservations, covenants, conditions, and agreements, express or implied, in respect of the same premises respectively, as fully as the Commissioners of Church Temporalities in Ireland would have been if this Act had not been passed: Provided always, that nothing herein contained shall affect any action or other proceeding which may have been commenced before the passing of this Act, but the same may proceed, with the like consequences and results, as if this Act had not been passed.

- (2.) All moneys, stocks, and securities standing in the name of the Commissioners of Church Temporalities in Ireland in the books of the Bank of Ireland, shall be entered in or transferred to the name of the Irish Land Commission, and be subject to the same trusts and powers as the same were liable to before the dissolution of the Commissioners of Church Temporalities; and the Governor and Company of the Bank of Ireland, under instructions from the Treasury, are hereby authorised and required to make the aforesaid entry or transfer in their books.
- (3.) All records and documents in the possession of the Commissioners of Church Temporalities at the time of their dissolution shall be transferred to the Irish Land Commission, who shall retain such of them as are in their opinion necessary for the management of the property transferred to them under this Act. The Land Commission shall preserve all such records and documents, and shall permit reasonable access to them, and shall from time to time lodge such of them as have ceased to be necessary for the aforesaid purpose in the Public Record Office of Ireland.
- (4.) Any obligation, security, or chose in

action vested in the Commissioners of Church Temporalities may be proceeded upon by the Irish Land Commission in their own name as the same might have been proceeded upon by the Commissioners of Church Temporalities.

- (5.) All the powers, authorities, and duties, rights, titles, and interests, vested in or exercised by the Commissioners of Church Temporalities in Ireland under the Irish Church Act, 1869, or any Act amending the same, and which are in force at the time of the dissolution of the said corporation, shall vest in and devolve upon and be exercised by, the Irish Land Commission, who shall, for the purposes of such Acts, be deemed to be the successors of the Commissioners of Church Temporalities in Ireland.

3. If any person who has been serving in the office of the Commissioners of Church Temporalities shall be appointed to a situation under the Irish Land Commission, such person shall hold his situation in all respects by the same tenure and on the same conditions as the persons appointed to similar situations under the Irish Land Commission without having served in the office of the Commissioners of Church Temporalities in Ireland, except that no such person who is qualified to receive under the forty-fourth section of the Irish Church Act, 1869, an annual sum on retirement from the service of the Commissioners of Church Temporalities shall forfeit his right under that section by being appointed to a situation under the Irish Land Commission.

Notwithstanding the dissolution before the thirty-first day of December next after the passing of this Act, under the provision in that behalf herein-before contained, of the corporation of the Commissioners of Church Temporalities in Ireland, the Treasury may, if they see fit, direct that the salaries of the said Commissioners, and of all persons employed by them on salary, and not appointed to situations entitling them at the same time to receive salaries under the Irish Land Commission, shall continue, up to the thirty-first day of December next after the passing of this Act, to be paid out of the property transferred by this Act to the Irish Land Commission.

The annual sum on retirement which any

person is qualified to receive under the said forty-fourth section of the Irish Church Act, 1869, shall be ascertained immediately after the passing of this Act, in the manner prescribed by the said section, as if the date of such person's retirement were the thirty-first day of December next after the passing of this Act, and such annual sum shall begin to be paid from that date to the person entitled to receive the same, provided that such person does not receive an appointment under the Irish Land Commission, or any other appointment of which the salary or remuneration is provided out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or out of moneys voted by Parliament. If any person to whom such an annual sum is payable receives an appointment under the Irish Land Commission, or an appointment of which the salary or remuneration is provided as last aforesaid, the payment of the said annual sum shall be subject to the same conditions as if it were a superannuation allowance or compensation within the meaning of the twentieth section of the Act of the fourth and fifth years of the reign of His late Majesty King William the Fourth, chapter twenty-four, and as if the appointment which such person has received were in all respects an appointment in a public department within the meaning of the said section.

4. A separate account shall be kept by the Irish Land Commission of the property transferred to them under this Act.

The Irish Land Commission, with the sanction of the Treasury, shall fix, and may from time to time, with the like sanction, vary, the amount of such an annual sum of money as in their judgment shall represent the average annual cost of administering and managing the said property, and the sum fixed by the Irish Land Commission shall be transferred from the account of the said property to the account of the Irish Land Commission, and shall be in full discharge of all payments due to them for the management and administration of the said property during the year in respect of which such transfer shall have been made, and every such sum so transferred shall be accounted for by the Irish Land Commissioners as the Treasury shall from time to time direct.

CHAP. 72.

Highways and Locomotives (Amendment) Act, 1878, Amendment Act, 1881.

ABSTRACT OF THE ENACTMENTS.

1. *Amendment of s. 13. of 41 & 42 Vict. c. 77.*

An Act to amend certain provisions
of the Highways and Locomotives
(Amendment) Act, 1878.

(27th August 1881.)

WHEREAS it is expedient to amend certain provisions of the Highways and Locomotives (Amendment) Act, 1878, (in this Act referred to as "the principal Act,") so far as such provisions relate to the exemption of certain places from the levying or collection of county rate:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the passing of this Act section thirteen of the principal Act shall be read and construed as though the following words were inserted therein:

"Provided further, that no part of such expenses incurred from and after the twenty-ninth day of September one thousand eight hundred and eighty-one shall be included in any precept or warrant issued by the county authority for the county of Southampton for the levying or collection within the Isle of Wight of the county rate for the said county."

A T A B L E

OF

All the STATUTES passed in the Second Session of the Twenty-second Parliament of the United Kingdom of Great Britain and Ireland.

44 & 45 VICTORIA, 1881.

PUBLIC GENERAL ACTS.

1. An Act to apply the sum of Two million five hundred thousand pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one
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2. An Act to remove Doubts as to the operation and effect of so much of the Burial Laws Amendment Act, 1880, as relates to the Births and Deaths Registration Act, 1874 4
3. An Act to further improve the Administration of Justice in the Judicial Committee of the Privy Council 4
4. An Act for the better Protection of Person and Property in Ireland 5
5. An Act to amend the Law relating to the carrying and Possession of Arms, and for the Preservation of the public Peace in Ireland 6
6. An Act to provide for an Annual Return of Rates, Taxes, Tolls, and Dues levied for local purposes in Scotland 8
7. An Act to authorise the Secretary of State for India in Council to sell a piece of land in Charles Street, Westminster, to the Commissioners of Her Majesty's Works and Public Buildings for the Public Service 9
8. An Act to apply certain Sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty, one thousand eight hundred and eighty-one, and one thousand eight hundred and eighty-two 11
9. An Act to provide during twelve months for the Discipline and Regulation of the Army - Page 11
10. An Act for the transfer of Property held for the Use and Service of the Inland Revenue to the Commissioners of Her Majesty's Works and Public Buildings; and for other purposes - 14
11. An Act to further amend the law relating to Sea Fisheries by providing for the protection of Clam and other Bait Beds - 15
12. An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue 17
13. An Act to amend the Municipal Elections Amendment (Scotland) Act, 1868 28
14. An Act to enable County Authorities in South Wales to take over and contribute towards certain Bridges, and to remove doubts as to the liability to repair the Highways over and adjoining certain Bridges which have been rebuilt 29
15. An Act to apply the sum of Six million nine hundred and seventy-five thousand six hundred and twenty-seven pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two 31
16. An Act to appoint additional Commissioners for executing the Acts for granting a Land Tax and other rates and taxes 31
17. An Act to amend the Tramways (Ireland) Acts, 1860, 1861, and 1871 32

18. An Act to amend the law with respect to the payment of Clerks of Petty Sessions in Ireland - - - Page 33
19. An Act for further regulating the Transmission of Newspapers - - - 34
20. An Act to amend the law with respect to the Acquisition of Land and the Execution of Instruments for the purposes of the Post Office - - - 35
21. An Act for the Amendment of the Law regarding Property of Married Women in Scotland - - - 38
22. An Act to amend the Bankruptcy Acts and Cessio Acts with respect to the discharge of Bankrupt Debtors in Scotland, and in certain other respects - - - 39
23. An Act to amend the law relating to the Official Staff of the Court of Bankruptcy in Ireland - - - 42
24. An Act to amend the law respecting the Service of Process of Courts of Summary Jurisdiction in England and Scotland - 43
25. An Act to extend for a period not exceeding Three Years the term fixed for the Repayment of Loans granted by the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy to Incumbents of Benefices - - - 45
26. An Act to amend the Law relating to the use of Gunpowder in certain Stratified Ironstone Mines - - - 46
27. An Act to amend the Burial Grounds (Scotland) Act, 1855 - - - 46
28. An Act to make provision for the payment by reduced Instalments of Loans under the Seed Supply (Ireland) Act, 1880; and to amend and explain the Relief of Distress (Ireland) Amendment Act, 1880, and the Local Government Board (Ireland) Act, 1872 - - - 47
29. An Act further to facilitate the building, enlargement, and maintenance of Reformatory Institutions in Ireland - - - 48
30. An Act to provide for the employment of certain Officers and Clerks by the Commissioners of Customs - - - 51
31. An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith - - - 52
32. An Act to remit certain Loans formerly made out of the Consolidated Fund - 57
33. An Act to amend the Summary Procedure Act, 1864 - - - 58
34. An Act to amend the Metropolitan Open Spaces Act, 1877 - - - 62
35. An Act to amend the Law relating to Coroners in Ireland - - - Page 67
36. An Act to authorise the establishment of a Court of Appeal for Her Majesty's Colony of British Honduras - - - 69
37. An Act to consolidate the Alkali Acts, 1863 and 1874, and to make further provision for regulating Alkali and certain other works in which noxious or offensive gases are evolved - - - 70
38. An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland; and for other purposes relating to Loans by those Commissioners 78
39. An Act to provide for uniform Terms of entry to and removal from Houses within Burghs in Scotland - - - 83
40. An Act to make farther provision in regard to the Registration of Parliamentary Voters, and also in regard to the taking of the Poll by means of Voting Papers, in the Universities of Scotland - - - 84
41. An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes - - - 89
42. An Act to suspend for a limited period, on account of Corrupt Practices, the holding of an Election of a Member or Members to serve in Parliament for certain cities and boroughs - - - 118
43. An Act to extend the Superannuation Act Amendment Act, 1873, to certain persons admitted into subordinate situations in the departments of the Postmaster-General, and the Commissioners of Her Majesty's Works and Public Buildings - - - 119
44. An Act for making better provision respecting the Remuneration of Solicitors in Conveyancing and other non-contentious Business - - - 120
45. An Act to amend the Pedlars Act, 1871, as regards the district within which a certificate authorises a person to act as Pedlar - 122
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47. An Act to amend the Law as regards the Presumption of Life in persons long absent from Scotland - - - 125

48. An Act further to amend the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes relating thereto - Page 128
 49. An Act to further amend the Law relating to the Occupation and Ownership of Land in Ireland, and for other purposes relating thereto - - - 137
 50. An Act to apply the sum of Twenty-one million six hundred and ninety-five thousand seven hundred and twelve pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two 161
 51. An Act to explain the Wild Birds Protection Act, 1880 - - - 162
 52. An Act for providing Funds to defray certain of the Expenses of the Royal University of Ireland - - - 162
 53. An Act for making further provision with respect to the Redemption of the Annuity created under the East Indian Railway Company Purchase Act, 1879; and for other purposes - - - 163
 54. An Act to make further provision with respect to the Indian Loan of 1879 - 165
 55. An Act to make further provision respecting the National Debt and the Investment of Moneys in the hands of the National Debt Commissioners on account of Savings Banks and otherwise - - - 166
 56. An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two, and to appropriate the Supplies granted in this Session of Parliament - - - 168
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 59. An Act for promoting the revision of the Statute Law by repealing various enactments chiefly relating to Civil Procedure or matters connected therewith, and for amending in some respects the law relating to Civil Procedure - - - 274
 60. An Act to amend the Law of Newspaper Libel, and to provide for the Registration of Newspaper Proprietors - - - 281
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 64. An Act to remove certain doubts as to the application of section twenty-four of the Prison Act, 1877, and enactments amending the same, to the Central Criminal Court district - - - 291
 65. An Act to facilitate leases of land for the erection thereon of Schools and Buildings for the promotion of Public Education in Ireland - - - 293
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 68. An Act to amend the Supreme Court of Judicature Acts; and for other purposes - - - 296
 69. An Act to amend the Law with respect to Fugitive Offenders in Her Majesty's Dominions, and for other Purposes connected with the Trial of Offenders - - 302
 70. An Act to continue various expiring Laws - - - 311
 71. An Act to make provision for the future administration of the Property and the performance of the Duties vested in the Commissioners of Church Temporalities in Ireland - - - 314
 72. An Act to amend certain provisions of the Highways and Locomotives (Amendment) Act, 1878 - - - 316
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- The Acts contained in the following List, being PUBLIC ACTS of a Local Character, are placed amongst the LOCAL AND PERSONAL ACTS.
- i. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Godalming, the Improvement Act District of Lytham, and the Borough of Stratford-upon-Avon.
 - iii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the towns of Clonakilty, Dromore, and Navan.

- xv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the City and Borough of Bath, the Local Government District of Bowness, the Improvement Act District of Cambridge, the Borough of Derby, the Port of Hartlepool, and the Local Government District of Wigton.
- xvi. An Act to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878, relating to the East Riding of the county of York.
- xvii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Asgarby, Bolingbroke, Boston, Carrington, Chesilborne, Frieston, Hagnaby, Hareby, Hundleby, Keal West, Leverton, Lusby, Mavis, Enderby, Milton Abbas, Miningsby, Ower-moigne, Reithby, Revesby, Spilsby, Stickford, and Thorpe, and to the Townships of Asselby, Balkholme, Barmby-on-the-Marsh, Bellasize, Blacktoft, Cotness, Eastrington, Gilberdike, Kendal, Kilpin, Knedlington, Laxton, Metham, Nether Graveship, Saltmarsh, Skelton, and Yokefleet.
- xviii. An Act to confirm a Scheme under the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869, relating to Brook Green, Eel Brook Common, Parson's Green, and another piece of waste land adjoining the King's Road.
- xix. An Act to confirm the Provisional Order for the Regulation of certain lands known as Langbar Moor, situate in the township of Nesfield-with-Langbar, in the parish of Ilkley, in the county of York, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- xx. An Act to confirm the Provisional Order for the Regulation of certain lands known as Beamsley Moor, situate in the township of Beamsleys Both, in the parish of Skipton, in the county of York, in pursuance of the report of the Inclosure Commissioners for England and Wales.
- xxi. An Act to confirm the Provisional Orders for the Inclosure of certain lands called or known as Scotton and Ferry Common, situate in the parish of Scotton, in the county of Lincoln, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- xxii. An Act to confirm the Provisional Order for the Inclosure of certain lands called or known as Wibsey Slack and Low Moor Commons, situate in the township of North Bierley, in the parish of Bradford, in the county of York, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- lxi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Boroughs of Berwick-upon-Tweed and Cheltenham, the Urban Sanitary District of Folkestone, the Rural Sanitary District of the Hendon Union, the Metropolis, and the Local Government Districts of Redruth, Swinton, and Willington.
- lxii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Bromsgrove, Claines, Dodderhill, Grafton Manor, Hadsor, Hampton Lovett, Hanbury, Hinlip, In-Liberties, Pelhams Lands, Saint Andrew Saint Nicholas, Saint Peter, Salwarpe, Swineshead, Upton Warren, and Warndon.
- lxiii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary District of the Brentford Union, the Bromley and Beckenham Joint Hospital District, the Local Government District of Burgess Hill, the Rural Sanitary District of the Cuckfield Union, the Local Government District of Houghton-le-Spring, the Special Drainage District of Hurstpierpoint, the Local Government District of Marple, the Stourbridge Main Drainage District, and the Rural Sanitary District of the Whitehaven Union.
- lxiv. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for the United School District of Clay Lane, Derby, to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- lxv. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to Waterworks in the towns of Bandon and Bangor, and in the Little Island in the county of Cork.
- lxvi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Boroughs of Halifax and Leeds, and the City of Manchester.
- lxvii. An Act to confirm a Provisional Order of the Local Government Board under the

- provisions of the Gas and Water Works Facilities Act, 1870, and the Public Health Act, 1875, relating to the Borough of Bridgnorth.
- lxviii. An Act to confirm a Provisional Order of the Local Government Board relating to the Borough of Birmingham.
- lxix. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the towns of Ballymena, Belmullet, and Enniskerry.
- lxx. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Cottingham, the Lanchester Joint Hospital District, and the Improvement Act District of Middleton and Tonge.
- lxviii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Askern and Atherton, the Borough of Birmingham, the Local Government Districts of Ealing and Hampton Wick, the City of Liverpool, the Borough of Middlesbrough, and the Local Government Districts of Selby and Shirley.
- xcix. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Horfield and Teignmouth.
- c. An Act to confirm the Provisional Order for the inclosure of certain lands called or known as Thurstaston Common, situate in the parish of Thurstaston, in the county of Chester, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- ci. An Act to confirm certain Provisional Orders under the Land Drainage Act, 1861.
- cii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Birmingham, Tame, and Rea Main Sewerage District, the Local Government Districts of Cowpen and Leigh, the Borough of Nottingham, and the Local Government District of Risca.
- ciiii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Brentford Gas, Chichester Gas, Ely Gas, Grays Thurrock Gas, Ilford Gas, Kirkham Gas, Northfleet and Greenhithe Gas, Pinner Gas, Staines and Egham Gas, Stone Gas, and Waltham Abbey and Cheshunt Gas; and to amend the Gas and Water Works Facilities Act, 1870, in so far as relates to the district of the Brentford Gas Company.
- civ. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Burghead, Cart, Craræ, Devonport, Folkestone, Folkestone (Central), Girvan, Leven, Lochaline, Penarth, Peterhead, Pittenweem, Ramsgate, Sandhaven, Shanklin, Stornoway, Weston-super-Mare, and Whitby.
- cv. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Bootle-cum-Linacre Corporation Tramways, Gravesend, Rosherville, and Northfleet Tramways, Jarrow and Hebburn and District Tramways Liverpool Corporation Tramways (Extension), Manchester Corporation Tramways, Middlesbrough Tramways (Extensions), North Staffordshire Tramways (Extensions), Rusholme Local Board Tramways, Shipley Tramways, South Gosforth Tramways, South Shields Corporation Tramways, Woolwich and South-east London Tramways, and York Tramways (Extensions).
- clxi. An Act to confirm the Provisional Order for the Regulation of certain lands known as Shenfield Common, situate in the parish of Shenfield, in the county of Essex, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- clxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Acton, Buxton, and Crompton, the Port of Harwich, the Improvement Act District of Llandudno, the Borough of Monmouth, the Local Government District of Norman-ton, the Borough of Pontefract, the Local Government District of Wallasey, the Borough of Walsall, the Improvement Act District of Wath-upon-Dearne, and the Local Board of Health District of Woolwich.
- clxiii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Western Districts Tramways, Dudley and Tipton Tramways, Dudley, Stourbridge, and Kingwinford Tramways, South Staffordshire Tramways, and Wednesbury and West Bromwich Tramways.
- clxiv. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Bristol Tramways (Extensions), Bury and District Tramways, City of London and Metropolitan Tramways, Lincoln Tramways, Lincolnshire Tramways, Rochdale Tramways, Shepherd's Bush and Hammersmith Tramways, and Worcester Tramways.

clxv. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Dyserth, Meliden, and Prestatyn Water, Harwich Water, Henley-on-Thames Water, Newport and Pillgwenlly Water, Newhaven and Seaford Water, and Poole Water.

clxvi. An Act to legalise certain Marriages celebrated in the Chapel at Alsager, in the parish of Barthomley.

clxvii. An Act to confirm a Provisional Order

made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.

ccxviii. An Act to explain and amend the Erne Lough and River Acts, 1876 and 1879.

ccxix. An Act to make provision with respect to the Navigation of the Solent between the Isle of Wight and the Mainland, in the county of Hants.

LIST OF THE LOCAL AND PRIVATE ACTS.

LOCAL ACTS.

The Titles to which the Letter P. is prefixed are Public Acts of a Local Character.

P. i. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Godalming, the Improvement Act District of Lytham, and the Borough of Stratford-upon-Avon.

ii. An Act to authorise the Cambridge University and Town Gaslight Company to acquire additional land and erect additional gasworks, and to raise further money.

P. iii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the towns of Clonakilty, Dromore, and Navan.

iv. An Act for making and maintaining a Road and Bridge across the River Stour in the Parish of Christchurch and County of Southampton.

v. An Act for making a Railway from Appledore to Lydd, in the county of Kent, and for other purposes.

vi. An Act for rendering valid certain Letters Patent granted to James Hancock for Improvements in Bobbin Net or Twist Lace Machines.

vii. An Act to authorise the Australian Agricultural Company to borrow further moneys on debenture.

viii. An Act for increasing the Capital of the Hylton Southwick and Monkwearmouth Railway Company and for other purposes.

ix. An Act for conferring additional powers on the Manchester Sheffield and Lincolnshire Railway Company and for other purposes.

x. An Act for regulating the Capital of the Colonial Company Limited and for other purposes.

xi. An Act to provide for the Dissolution of the Lesmahagow Railways Guaranteed Company, the Dundee and Perth and Aberdeen Railway Junction Company, and the Forth and Clyde Navigation Guaranteed Company, and for the Conversion of the Stocks of those Companies into Annuities Stock of the Caledonian Railway Company; and for other purposes.

xii. An Act to extend the time limited for the compulsory purchase of Lands and completion of the Railway and Works authorised by the Ramsey and Somersham Junction Railway Acts 1875 and 1878 and for other purposes.

xiii. An Act to revive and extend the powers of the Cleveland Extension Mineral Railway Company.

xiv. An Act to make further Provisions with respect to the Police Superannuation Fund of the City of Liverpool and for other purposes.

P. xv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the City and Borough of Bath,

the Local Government District of Bowness, the Improvement Act District of Cambridge, the Borough of Derby, the Port of Hartlepool, and the Local Government District of Wigton.

P. xvi. An Act to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878, relating to the East Riding of the county of York.

P. xvii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Asgarby, Bolingbroke, Boston, Carrington, Chesilborne, Frieston, Hagnaby, Hareby, Hundleby, Keal West, Leverton, Lusby, Mavis Enderby, Milton Abbas, Miningsby, Owermoigne, Reithby, Revesby, Spilsby, Stickford, and Thorpe, and to the Townships of Asselby, Balkholme, Barmby-on-the-Marsh, Bellasize, Blacktoft, Cotoness, Eastrington, Giberdike, Kendal, Kilpin, Knedlington, Laxton, Metham, Nether Graveship, Saltmarsh, Skelton, and Yokefleet.

P. xviii. An Act to confirm a Scheme under the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869, relating to Brook Green, Eel Brook Common, Parson's Green, and another piece of waste land adjoining the King's Road.

P. xix. An Act to confirm the Provisional Order for the Regulation of certain lands known as Langbar Moor, situate in the township of Nesfield-with-Langbar, in the parish of Ilkley, in the county of York, in pursuance of a report of the Inclosure Commissioners for England and Wales.

P. xx. An Act to confirm the Provisional Order for the Regulation of certain lands known as Beamsley Moor, situate in the township of Beamsleys Both, in the parish of Skipton, in the county of York, in pursuance of the report of the Inclosure Commissioners for England and Wales.

P. xxi. An Act to confirm the Provisional Orders for the Inclosure of certain lands called or known as Scotton and Ferry Common, situate in the parish of Scotton, in the county of Lincoln, in pursuance of a report of the Inclosure Commissioners for England and Wales.

P. xxii. An Act to confirm the Provisional Order for the Inclosure of certain lands called or known as Wibsey Slack and Low Moor

Commons, situate in the township of North Bierley, in the parish of Bradford, in the county of York, in pursuance of a report of the Inclosure Commissioners for England and Wales.

xxiii. An Act to further extend the time for the completion of the North and South Woolwich Subway.

xxiv. An Act for reviving the powers and extending the time for the completion of a portion of the Railway and Works authorised by the Brading Harbour Improvement Railway and Works Act 1874 and for other purposes.

xxv. An Act to authorise the Metropolitan Railway Company to make part of Railway No. 1 authorised by the Metropolitan and District (City Lines and Extensions) Act 1879 to make Agreements with respect to the widening of part of the Saint John's Wood Railway and to raise additional Capital also to authorise that Company and the Great Western Railway Company to purchase additional Lands and for other purposes.

xxvi. An Act to extend and amend enactments relating to the Company of Proprietors of the Sheffield Waterworks and for other purposes.

xxvii. An Act for incorporating the Westgate and Birchington Gas Company and conferring powers on them with reference to the construction and maintenance of works the supply of Gas and otherwise; and for other purposes.

xxviii. An Act to authorise the Paisley Waterworks Commissioners to construct additional works; and for other purposes.

xxix. An Act to enable the Byker Bridge Company (Newcastle-upon-Tyne) to raise additional Capital and to acquire Land.

xxx. An Act for conferring additional powers upon the Sevenoaks Gas Company, and for other purposes.

xxxi. An Act to amend the Canada Company's Act of 1856, and to confer further powers upon the Company, and for other purposes relating thereto.

xxxii. An Act to confer further powers upon the Fylde Waterworks Company; and for other purposes.

xxxiii. An Act to extend the time for completing certain works in connexion with the London and Blackwall Railway.

xxxiv. An Act for the Abandonment of the Penarth, Sully, and Barry Railway.

- xxxv. An Act for enabling the Richmond Gas Company to raise additional Capital, to enlarge their Works, and for other purposes.
- xxxvi. An Act for making further provision respecting the Capital and Undertaking of the Crystal Palace Company and for other purposes.
- xxxvii. An Act for authorising the sale or transfer to the Great Eastern Railway Company of the Undertaking of the East Norfolk Railway Company; and for other purposes.
- xxxviii. An Act to incorporate the North Level Commissioners and to enable them to lay an additional tax on lands within their district and to borrow further money to amend the Nene Outfall Acts and for other purposes.
- xxxix. An Act for continuing and maintaining a United Constabulary Force in and for the University and City of Oxford.
- xl. An Act to amend the Acts relating to the Company of Proprietors of the Coventry Canal Navigation; and for other purposes.
- xli. An Act for extending the Powers of the Railway Passengers Assurance Company, and enabling them to grant Insurances against Liability for Compensation in respect of Death or Injury occasioned by Accident; and for other purposes.
- xlii. An Act to revive the powers of the Ruthin and Cerrig-y-druidion Railway Company for the compulsory Purchase of Lands for making and to extend the time for completing the Railway authorised by the Ruthin and Cerrig-y-druidion Railway Act 1876.
- xliii. An Act to enable the Great Northern Railway Company (Ireland) to extend their Railway to Carrickmacross in the county of Monaghan and to Belturbet in the county of Cavan and for other purposes.
- xliv. An Act to re-incorporate with further Powers the Hexham Gaslight Company Limited.
- xlv. An Act to extend the time for the completion of certain of the Tramways authorised by the Saint Helens and District Tramways Act 1879.
- xlvi. An Act for empowering the Gosport Street Tramways Company to extend their authorised Tramways and for other purposes.
- xlvii. An Act for empowering the London and North-western and the Midland Railway Companies to make a new Railway and other Works at Market Harborough and for other purposes.
- xlviii. An Act to confer further powers upon the Cleator and Workington Junction Railway Company for the extension of the railways and for other purposes.
- xlix. An Act for authorising the Mersey Docks and Harbour Board to acquire and work vessels for the pilotage service of the port of Liverpool to borrow moneys for that purpose and to make byelaws for regulating the division amongst pilots of pilotage earnings and for altering the times of vacation of office by members of the Board and the times of nomination election and appointment of new members.
- 1. An Act for extending the limits of supply of the Eastbourne Waterworks Company and for conferring further powers on the Company for the construction of works the raising of money and otherwise in relation to their undertaking and for other purposes.
- ii. An Act to empower the Penarth Harbour Dock and Railway Company to extend their existing Dock and to execute other works in connexion therewith and to raise additional capital; and for other purposes.
- iii. An Act for modifying the provisions relating to the completion of works; the borrowing and repayment of money; the application of dues and sums received by the Tyne Improvement Commissioners; and for other purposes.
- liii. An Act for conferring additional powers upon the Hyde Gas Company; and for other purposes.
- liv. An Act to confer further Powers on the Burry Port and North-western Junction Railway Company; and for other purposes.
- lv. An Act to extend the time for purchasing Lands and completing the Metropolitan City Lines and Extensions.
- lvi. An Act for incorporating and conferring powers on the Alnwick Gas Company.
- lvii. An Act to enable the West Lancashire Railway Company to purchase certain lands in the county of Lancaster and a branch railway or siding known as the Tarleton Branch Railway to raise further moneys and to confer further powers in relation to their undertaking on the Company and for other purposes.
- lviii. An Act to enable the Milford Haven Dock and Railway Company to lease their Railway and Pier undertaking and for other purposes.
- lix. An Act to authorise the construction of a Railway at Burton-on-Trent by Messieurs Worthington and Company; and for other purposes.

- lx. An Act for providing an additional supply of water to Kirkcaldy and Dysart and suburbs and places adjacent; and for other purposes.
- P. lxi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Boroughs of Berwick-upon-Tweed and Cheltenham, the Urban Sanitary District of Folkestone, the Rural Sanitary District of the Hendon Union, the Metropolis, and the Local Government Districts of Redruth, Swinton, and Willington.
- P. lxii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Bromsgrove, Claines, Dodderhill, Grafton Manor, Hadsor, Hampton Lovett, Hanbury, Hinlip, In-Liberties, Pelhams Lands, Saint Andrew, Saint Nicholas, Saint Peter, Salwarpe, Swineshead, Upton Warren, and Warndon.
- P. lxiii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary District of the Brentford Union, the Bromley and Beckenham Joint Hospital District, the Local Government District of Burgess Hill, the Rural Sanitary District of the Cuckfield Union, the Local Government District of Houghton-le-Spring, the Special Drainage District of Hurstpierpoint, the Local Government District of Marple, the Stourbridge Main Drainage District, and the Rural Sanitary District of the Whitehaven Union.
- P. lxiv. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for the United School District of Clay Lane, Derby, to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- P. lxv. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to Waterworks in the towns of Bandon and Bangor, and in the Little Island in the county of Cork.
- P. lxvi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Boroughs of Halifax and Leeds, and the City of Manchester.
- P. lxvii. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Gas and Water Works Facilities Act, 1870, and the Public Health Act, 1875, relating to the Borough of Bridgnorth.
- P. lxviii. An Act to confirm a Provisional Order of the Local Government Board relating to the Borough of Birmingham.
- P. lxix. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the towns of Ballymena, Belmullet, and Enniskerry.
- P. lxx. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Cottingham, the Lanchester Joint Hospital District, and the Improvement Act District of Middleton and Tonge.
- lxxi. An Act for extending the boundaries of the burgh of Irvine for municipal and police purposes; for empowering the Corporation to widen and improve streets, and to supply gas and water; and for other purposes.
- lxxii. An Act to enable the mayor aldermen and burgesses of the borough of Leicester to construct additional Flood Works and for other purposes.
- lxxiii. An Act to confer further powers on the Lord Provost, Magistrates, and Town Council of the Royal Burgh and City of Aberdeen, for municipal, police, and other purposes.
- lxxiv. An Act for extending the time for the compulsory purchase of lands and for the construction of the works authorised by the Cheltenham Corporation Water Act 1878 for extending the limits of water supply of the Corporation and for other purposes.
- lxxv. An Act to enable the Town of Dudley Gaslight Company to raise a further Sum of Money.
- lxxvi. An Act to enable the Matlock Waterworks Company to acquire additional land to raise further capital and for other purposes.
- lxxvii. An Act to enable the Local Board for the district of Ryton (Parish), in the county of Durham, to acquire Waters and lands for the purposes of their Water undertaking.
- lxxviii. An Act to authorise the Cleator Moor Local Board to construct Waterworks for the supply of water to their district and to make further provision for the government of their district and for other purposes.
- lxxix. An Act for the Abandonment of the Glencairn Railway and for authorising the repayment of the money deposited for securing its completion.
- lxxx. An Act to incorporate the Goole and District Gas and Water Company; to enable them to acquire the Gas Undertaking at Goole belonging to the Undertakers of the Navigation of the Rivers of Aire and Calder,

- in the county of York; to construct Waterworks; and for other purposes.
- lxxxi. An Act for enabling the Local Board for the District of West Ham, in the county of Essex, to make certain alterations and to maintain certain Works in and upon the Embankment of the Northern Outfall Sewer vested in the Metropolitan Board of Works, and to enlarge and add to their Town Hall and Offices; and for granting additional powers to the said Local Board; and for other purposes.
- lxxxii. An Act to authorise the construction and maintenance of a railway from near the Beattock Station of the Caledonian Railway to Moffat; and for other purposes.
- lxxxiii. An Act for empowering the Colne and Marsden Local Board to acquire the Colne Waterworks, to construct additional waterworks, to make street improvements, and to make better provision in relation to the disposal of the sewage, the holding of markets, and the good government of the district, and for other purposes.
- lxxxiv. An Act for extending the powers of the Bingley Improvement Commissioners in relation to the supply of Water to their District, for empowering the Commissioners to make Street Improvements, and to make further provision for the Local Government of the District of the Commissioners; and for other purposes.
- lxxxv. An Act for vesting in Commissioners the Harbour of Burntisland, in the County of Fife; for improving and maintaining the said Harbour; and for other purposes.
- lxxxvi. An Act to enable the Metropolitan District Railway Company to make a junction at West Brompton and to confer other powers on the Company.
- lxxxvii. An Act to confer further powers on the Charnwood Forest Railway Company, and to authorise a diversion of part of their authorised line; and for other purposes.
- lxxxviii. An Act to constitute a body of Harbour Trustees for the management, maintenance, and regulation of the Harbour of Dumbarton; and for other purposes.
- lxxxix. An Act for making better provision respecting the borrowing of money by the Commissioners of Sewers of the City of London for the purposes of the Artisans Dwellings Acts and for other purposes.
- xc. An Act for further improving the drainage by the River Witham, in the County of Lincoln, and for amending the Acts relating thereto; and for other purposes.
- xc. An Act to authorise the London Chatham and Dover Railway Company to construct a Railway in the County of Kent to be called the Maidstone and Faversham Junction Railway and for other purposes.
- xcii. An Act to confer further powers on the London Chatham and Dover Railway Company in respect of the Maidstone and Ashford Railway.
- xciii. An Act to authorise the London Chatham and Dover Railway Company to construct a Railway with a Bridge over the River Thames and for other purposes.
- xciv. An Act to make further Provision respecting the Borrowing of Money by the Corporation of Kingston-upon-Hull and for other purposes.
- xcv. An Act for authorising the Justices of the Peace for the County Palatine of Lancaster to construct Bridges over the Rivers Lune and Croal, and to consolidate the County Debt; and for other purposes.
- xcvi. An Act to vest the undertaking of the Watford and Rickmansworth Railway Company in the London and North-western Railway Company; and for other purposes.
- xcvii. An Act to confer further powers on the Midland Great Western Railway of Ireland Company; and for other purposes.
- P. xcviii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Askern and Atherton, the Borough of Birmingham, the Local Government Districts of Ealing and Hampton Wick, the City of Liverpool, the Borough of Middlesbrough, and the Local Government Districts of Selby and Shirley.
- P. xcix. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Horfield and Teignmouth.
- P. c. An Act to confirm the Provisional Order for the inclosure of certain lands called or known as Thurstaston Common, situate in the parish of Thurstaston, in the county of Chester, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- P. ci. An Act to confirm certain Provisional Orders under the Land Drainage Act, 1861.
- P. cii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Birmingham, Tame, and Rea Main Sewerage District, the Local Government Districts of Cowpen and Leigh, the Borough of Nottingham, and the Local Government District of Risca.

- P. ciii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Brentford Gas, Chichester Gas, Ely Gas, Grays Thurrock Gas, Ilford Gas, Kirkham Gas, Northfleet and Greenhithe Gas, Pinner Gas, Staines and Egham Gas, Stone Gas, and Waltham Abbey and Cheshunt Gas; and to amend the Gas and Water Works Facilities Act, 1870, in so far as relates to the district of the Brentford Gas Company.
- P. civ. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Burghead, Cart, Craræ, Devonport, Folkestone, Folkestone (Central), Girvan, Leven, Lochaline, Penarth, Peterhead, Pittenweem, Ramsgate, Sandhaven, Shanklin, Stornoway, Weston-super-Mare, and Whitby.
- P. cv. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Bootle-cum-Linacre Corporation Tramways, Gravesend, Rosherville, and Northfleet Tramways, Jarrow and Hebburn and District Tramways, Liverpool Corporation Tramways (Extension), Manchester Corporation Tramways, Middlesbrough Tramways (Extensions), North Staffordshire Tramways (Extensions), Rusholme Local Board Tramways, Shipley Tramways, South Gosforth Tramways, South Shields Corporation Tramways, Woolwich and South-east London Tramways, and York Tramways (Extensions).
- cvi. An Act to confer further powers on the Limerick and Kerry Railway Company, and other Companies.
- cvii. An Act for making further Provision respecting the Borrowing of Money by the Corporation of Swansea; and for other purposes.
- cviii. An Act to make provision for the payment of the debts of the East London Railway Company.
- cix. An Act to incorporate the Ipswich Tramways Company, and to authorise the acquisition by them of Tramways in the borough of Ipswich, and to empower them to construct new Tramways; and for other purposes.
- cx. An Act for authorising the construction of Works for supplying Sea Water to certain parts of London and other places; and for other purposes.
- cx. An Act for better supplying with Water the borough of Beverley, in the East Riding of the county of York.
- cxii. An Act to authorise the construction of a new Dock and other Works at Boston, in the county of Lincoln, and for conferring further Powers on the Mayor, Aldermen, and Burgesses of the borough of Boston in relation to the port and harbour of Boston.
- cxiii. An Act to amalgamate the Montrose and Bervie Railway Company with the North British Railway Company; and for other purposes.
- cxiv. An Act to enable the Warehouse Owners Company Limited to issue transferable certificates and warrants for the delivery of goods and for other purposes.
- cxv. An Act to authorise the Hoylake and Birkenhead Rail and Tramway Company to extend their Railway to Seacombe; to change the name of the Company; and for other purposes.
- cxvi. An Act for incorporating the Woking Water and Gas Company; and for other purposes.
- cxvii. An Act for making a Railway from the Aylesbury and Buckingham Railway at Aylesbury to the Rickmansworth Extension Railway at Rickmansworth; and for other purposes.
- cxviii. An Act to revive the powers and extend the periods for the compulsory purchase of lands and for the construction of the Brighton and Dyke Railway.
- cxix. An Act for confirming an Agreement for the maintenance, working, and management of the Undertaking of the Cathcart District Railway Company by the Caledonian Railway Company; for enabling the Caledonian Railway Company to contribute to and hold shares in that Undertaking, to acquire the remaining shares in the Busby Railway Company, and to provide a Hotel at their Central Station in Glasgow; for dissolving the Busby Railway Company and vesting their Undertaking in the Caledonian Railway Company; and for other purposes.
- cxx. An Act to extend the powers of the Standard Bank of British South Africa (Limited), and for other purposes relating thereto.
- cxxi. An Act to extend the boundary of the borough of Barrow-in-Furness, to empower the Mayor, Aldermen, and Burgesses of the borough to make Tramways and new Streets, to confer further Borrowing Powers, to make better provision for the good government of the borough; and for other purposes.
- cxxii. An Act to enable the Mayor, Aldermen, and Burgesses of the borough of Bradford,

- in the West Riding of the county of York, to construct and maintain additional Works for the storage and supply of Water, to enlarge the Time for making Waterworks already authorised, to effect Public Improvements, to enlarge the Borough for municipal, sanitary, and school board purposes; and for other purposes.
- ccxiii. An Act to authorise the Local Board for the District of Egremont, in the county of Cumberland, to construct Waterworks and to supply Water; and for other purposes.
- ccxiv. An Act to authorise the Stirling Waterworks Commissioners to make and maintain an additional Reservoir and other Works, and to extend the supply of Water; and for other purposes.
- ccxv. An Act for empowering the Cork, Blackrock, and Passage Railway Company to provide and use Steam and other Vessels; and for other purposes.
- ccxvi. An Act for enabling the Great Southern and Western Railway Company to extend their Railway to Baltinglass, and to form a junction with the Limerick and Kerry Railway at Tralee; to acquire additional Lands; and for other purposes.
- ccxvii. An Act for rendering valid certain Letters Patent granted to John Greene for the invention of improvements in the manufacture of Types Logotypes and Phrasotypes and in Apparatus therefor.
- ccxviii. An Act for incorporating and conferring powers on the parts of Holland and Sutton Bridge Water Company.
- ccxix. An Act for conferring further powers on the London, Chatham, and Dover Railway Company; and for other purposes.
- ccxx. An Act for making Tramways in the county of Devon, to be called "The Exeter Tramways"; and for other purposes.
- ccxxi. An Act for conferring further powers upon the Cheshire Lines Committee, and upon the three Companies represented upon that committee.
- ccxxii. An Act for making a railway from Canterbury through the Elham Valley to join the South-eastern Railway in the parish of Cheriton, in the county of Kent; and for other purposes.
- ccxxiii. An Act to enable the City of Glasgow Union Railway Company to construct a short new railway; to abandon certain authorised railways; to convert, consolidate, and re-arrange some of their stocks and shares; and for other purposes.
- ccxxiv. An Act to authorise the Great Eastern Railway Company to widen several of their railways, to make new railways, tramways, and works, and to exercise various powers in relation to their own undertaking and capital, and the undertakings of other companies, and for amending their Acts; and for other purposes.
- ccxxv. An Act for conferring further powers on the Lancashire and Yorkshire Railway Company with relation to their own undertaking and undertakings in which they are jointly interested; and for other purposes.
- ccxxvi. An Act to authorise the Manchester, Sheffield, and Lincolnshire Railway Company to construct a new railway and other works, and to confer further powers upon that Company, and upon the Wigan Junction Railways Company, in connexion with their undertakings; and for other purposes.
- ccxxvii. An Act to provide for the restoration of the Railway communication across the Tay, near Dundee; and for other purposes.
- ccxxviii. An Act to amend the Acts relating to the King's Lynn Dock Company, and to confer further Powers upon that Company.
- ccxxix. An Act for enabling the Caledonian Railway Company to make railways to Airdrie and other places in the county of Lanark; and for other purposes.
- cxl. An Act to dissolve and re-incorporate the Dublin United Tramways Company (Limited), and to amalgamate therewith the Dublin Tramways Company, the North Dublin Street Tramways Company, and the Dublin Central Tramways Company; and for other purposes.
- cxli. An Act for empowering the London and North-western Railway Company to make new railways, and widen, alter, and improve portions of their existing railways, and for conferring further powers upon that Company, and the Lancashire and Yorkshire Railway Company, and upon the Lancashire Union Railways Company, in respect of other undertakings in which they are jointly interested; and for other purposes.
- cxlii. An Act to authorise the construction and maintenance of a Dock, and other Works in connexion therewith, in the parish of Dagenham, in the county of Essex.
- cxliii. An Act to enable the Commissioners of the Bray township to construct a Sea Wall along the Esplanade, and other works; and for other purposes.
- cxliv. An Act for making a railway from the London, Chatham, and Dover Railway to

- the borough of Gravesend, and widening and extending Church Street in Gravesend; and for other purposes.
- cxlv. An Act to authorise the construction of Street Tramways between Rotherham and Rawmarsh, in the West Riding of the county of York; and for other purposes.
- cxlvi. An Act for making a railway between Swindon and Cheltenham; and for other purposes.
- cxlvii. An Act to provide for the building of a new Bridge over the River Tees and of approach Roads thereto by the Corporation of Stockton and the Local Board for the District of South Stockton, and for removing the existing Stockton Bridge; to enable the justices of the county of Durham and of the North Riding of the county of York and the Tees Conservancy Commissioners to make contributions towards the expenses thereof; and for other purposes.
- cxlviii. An Act to enable the Metropolitan Board of Works to acquire certain rights and interests in and affecting Hackney Commons.
- cxlix. An Act for conferring further powers on the Glasgow and South-western Railway Company for the construction of Works, the acquisition of Lands, and the raising of Money; for authorising the discontinuance of the Paisley Canal; and for other purposes.
- cl. An Act to confer further powers on the Leeds Tramways Company.
- cli. An Act for conferring new and revived and extended powers upon the Midland Railway Company for the construction of Railways and other Works, and the acquisition of Lands; for vesting in the Company the Undertaking of the Keighley and Worth Valley Railway Company; for amending the Acts relating to the Company and to the Lessees of the North and South Western Junction Railway; for raising further Capital; and for other purposes.
- clii. An Act to authorise the Corporation of Birkenhead to construct additional Waterworks and extend their Gasworks, and for other purposes in relation to their Water and Gas Undertakings.
- cliii. An Act to consolidate and amend the Acts relating to the borough of Birkenhead; to make a Bridge; and for other purposes.
- cliv. An Act for enabling the Caledonian Railway Company to make Railways for connecting their Scottish Central Line at Larbert with their Grangemouth Branch, and with the Railway to Carron Ironworks; and for other purposes.
- clv. An Act to divide the District of the Local Board of Health of Edmonton, in the county of Middlesex; and for other purposes.
- clvi. An Act to confer further powers upon the Great Northern Railway Company to enable them to acquire the Stafford and Uttoxeter Railway; and for other purposes.
- clvii. An Act for conferring further powers upon the London and North-western Railway Company in relation to their own Undertaking and other Undertakings in which they are interested jointly with other Companies, and also for conferring powers upon the Lancashire Union Railways Company, the Great Western Railway Company, the Midland Railway Company, and the Oldham, Ashton-under-Lyne, and Guide Bridge Junction Railway Company in relation to such other Undertakings; and for other purposes.
- clviii. An Act for authorising the Sale of the Undertaking of the Potteries, Shrewsbury, and North Wales Railway Company.
- clix. An Act to incorporate a Company for the construction of the Swanage Railway; and for other purposes.
- clx. An Act to confirm the creation and issue of a certain Debenture Stock by the East London Waterworks Company.
- P. clxi. An Act to confirm the Provisional Order for the Regulation of certain lands known as Shenfield Common, situate in the parish of Shenfield, in the county of Essex, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- P. clxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Acton, Buxton, and Crompton, the Port of Harwich, the Improvement Act District of Llandudno, the Borough of Monmouth, the Local Government District of Normanton, the Borough of Pontefract, the Local Government District of Wallasey, the Borough of Walsall, the Improvement Act District of Wath-upon-Deane, and the Local Board of Health District of Woolwich.
- P. clxiii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Western Districts Tramways, Dudley and Tipton Tramways, Dudley, Stourbridge, and Kingswinford Tramways, South Staffordshire Tramways, and Welnesbury and West Bromwich Tramways.

- P. clxiv. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Bristol Tramway (Extensions), Bury and District Tramways, City of London and Metropolitan Tramways, Lincoln Tramways, Lincolnshire Tramways, Rochdale Tramways, Shepherd's Bush and Hammersmith Tramways, and Worcester Tramways.
- P. clxv. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Dyserth, Meliden, and Prestatyn Water, Harwich Water, Henley-on-Thames Water, Newport and Pillgwenlly Water, Newhaven and Seaford Water, and Poole Water.
- P. clxvi. An Act to legalize certain Marriages celebrated in the Chapel at Alsager, in the parish of Barthomley.
- P. clxvii. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- clxviii. An Act to extend and amend the powers of the Mayor, Aldermen, and Burgesses of the City of Bristol as to the taking of Dues and Charges for the use of their Docks, and to make further provisions for the accommodation of the Trade of the Port of Bristol; and for other purposes.
- clxix. An Act for enabling the Caledonian Railway Company to make a Railway Siding, and acquire Lands at Patrick; and for other purposes.
- clxx. An Act to authorise the construction of Tramways in the counties of Middlesex and Essex; and for other purposes.
- clxxi. An Act to provide for the better local government and improvement of the borough of Reading, to amend the Reading School Act, 1867, and to make further provision for the raising of money by the corporation of the said borough; and for other purposes.
- clxxii. An Act to authorise the South Metropolitan Gas Company to purchase additional lands, construct new works, and raise further capital, and to amend their Acts; and for other purposes.
- clxxiii. An Act to authorise the Southwark and Deptford Tramways Company to construct additional Tramways; to raise further Capital; and for other purposes.
- clxxiv. An Act to provide for the conservancy of the River Medway, and for the regulation, management, and improvement thereof.
- clxxv. An Act for making a Railway from Uxbridge, in the county of Middlesex, to Rickmansworth, in the county of Hertford; and for other purposes.
- clxxvi. An Act to enable the Edinburgh Street Tramways Company to make and maintain additional Tramways, and to convert part of the Portobello lines into a double line of Tramway, and to confer other powers upon the said Company.
- clxxvii. An Act to authorise the Staines and West Drayton Railway Company to divert a portion of their authorised Railway near West Drayton; and for other purposes.
- clxxviii. An Act for extending the municipal and police boundaries of the burgh of Oban, in the county of Argyll; for increasing the number of magistrates and councillors of the burgh; for regulating the management and maintenance of roads; for providing an improved supply of water; and for other purposes.
- clxxix. An Act to make provision for the Drainage of the lands in the valley of the River Nar, in the county of Norfolk; and for other purposes relating thereto.
- clxxx. An Act to change the name of the Dudley and Oldbury Junction Railway Company; to confer further powers on that Company and on the Great Western Railway Company; and for other purposes.
- clxxxi. An Act for the transfer of the Powers of the Kilorglin Railway Company to the Great Southern and Western Railway Company; and for other purposes.
- clxxxii. An Act to facilitate the management of blocks of buildings occupied in sections as separate tenements, and the disposal of each separate tenement; and for that purpose to incorporate a Company with powers of management, and also powers to erect and promote the erection of such buildings, and other powers.
- clxxxiii. An Act to authorise the North British Railway Company to make a Railway in the county of Cumberland; to stop up part of the Glasgow, Dumbarton, and Helensburgh Railway; to raise additional Capital; and for other purposes.
- clxxxiv. An Act to authorise the South London Tramways Company to construct additional Tramways; to raise further Money; and for other purposes.
- clxxxv. An Act to confer further powers on the Whitland and Cardigan Railway Company, and to authorise a diversion of part of their authorised line; and for other purposes.

- clxxxvi. An Act for incorporating a Company and authorising them to make and maintain a Dock Railway and other works at Annan; and for other purposes.
- clxxxvii. An Act for rendering valid certain Letters Patent granted to Henry Syed Smart Copland for improvements in the formation of roads or ways with wood paving with or without rails and in apparatus for the purpose.
- clxxxviii. An Act for conferring further powers on the Furness Railway Company for the construction of Works, the raising of Money, and otherwise in relation to their undertaking; and for other purposes.
- clxxxix. An Act for incorporating the Oxted and Groombridge Railway Company; and for other purposes.
- cx. An Act to empower the Banbury and Cheltenham Direct Railway Company to raise further Money, and to alter the levels of a portion of their authorised Railway; to extend the time limited for the construction of their Railways; and for other purposes.
- cxci. An Act to extend the Borough of Stalybridge, and to confer further powers upon the Corporation of that Borough.
- cxcii. An Act for enabling the Metropolitan Board of Works to construct new Bridges over the Thames at Putney and Battersea, with approaches thereto; to alter and reconstruct Vauxhall and Deptford Creek Bridges; for amending the Metropolis Toll Bridges Act, 1877; and for other purposes.
- cxci. An Act for making a Railway in Lancashire, to be called the Southport and Cheshire Lines Extension Railway; and for other purposes.
- cxci. An Act to authorise the construction of a Railway from the town of Macroom, in the county of Cork, to the town of Kenmare, in the county of Kerry; and for other purposes.
- cxci. An Act to confer on the South-eastern Railway Company further powers with reference to their own undertakings, and those of other Companies; and for other purposes.
- cxci. An Act to authorise a deviation of part of the Rosebush and Fishguard Railway; to extend the time for the compulsory purchase of Lands for and for the completion of other part of that Railway; to authorise the sale or lease of the Narbeth Road and Maenclochog Railway to the Rosebush and Fishguard Railway Company; to enable the last-mentioned Company to raise further Money; and for other purposes.
- cxvii. An Act to commute the Tithes in the Parish of St. Botolph Without, Aldgate, in the City of London; and for other purposes.
- cxviii. An Act to authorise the construction of a Dock and Railway at Greenwich, in the county of Kent, to be called "The Greenwich Dock and Railway;" and for other purposes.
- cxix. An Act to confer further powers on the Lynn and Fakenham, Yarmouth and North Norfolk, and Yarmouth Union Railway Companies.
- cc. An Act to authorise the Belfast, Holywood, and Bangor Railway Company to lay down additional narrow gauge rails on their Railway; to raise additional Capital; to use steam vessels between Belfast, Holywood, and Bangor; and for other purposes.
- cci. An Act to confirm the transfer of the Morayshire Railway to the Great North of Scotland Railway Company; and for other purposes.
- ccii. An Act to confer further powers on the Teign Valley Railway Company in relation to their undertaking; and for other purposes.
- cciii. An Act to incorporate and confer powers on the Manufacturers' and Millowners' Mutual Aid Association for facilitating the cleansing and preventing the pollution of rivers and streams of running water.
- cciv. An Act to grant further time for the completion of the Anglesea Bridge authorised by the Cork Improvement Act, 1875.
- ccv. An Act to increase the number of the Severn Commissioners; to regulate and alter the construction of their Weirs; to amend the Severn Navigation Acts; and for other purposes.
- ccvi. An Act to provide for the amalgamation of the Brighton Gaslight and Coke Company with the Brighton and Hove General Gas Company, and to authorise the said Company to purchase the undertaking of the Aldington, Hove, and Brighton Gas Company; to acquire lands; and for other purposes.
- ccvii. An Act to authorise a lease of the Kenley Waterworks to the Caterham Spring Water Company, to increase the number of directors of the Company, and to enable them to raise further money; and for other purposes.
- ccviii. An Act for conferring upon the Great Western Railway Company further powers in connexion with their own and other undertakings, and for conferring upon other Companies further powers in connexion with undertakings in which they are jointly

- interested with the Company ; for vesting in the Company the undertaking of the Coleford, Monmouth, Usk, and Pontypool Railway Company ; for extending the respective periods now limited for the completion of the Ross and Ledbury and the Newent Railways ; for the abandonment of the Fal Valley Branch Railway ; and for other purposes.
- ccix. An Act for authorising the London and South-western Railway Company to construct new Railways in the county of Surrey, to extend their Lymington Branch Railway, to execute further works, and to purchase additional lands for the improvement of their existing Railways and stations ; to provide for the apportionment of the consideration for the purchase or lease of the Mid Hants Railway, and the dissolution of the Mid Hants Railway Company ; and for other purposes.
- ccx. An Act to incorporate a Company for the Construction of the Rotherham and Bawtry Railway ; and for other purposes.
- ccxi. An Act to authorise the Carmarthen and Cardigan Railway Company to sell their undertaking to the Great Western Railway Company, and for extending the Carmarthen and Cardigan Railway to Newcastle Emlyn ; and for other purposes.
- ccxii. An Act for making a railway from the London and South-western Railway Company's Station at Surbiton to the Fulham Extension of the Metropolitan District Railway Company at Fulham ; and for other purposes.
- ccxiii. An Act to transfer to the Belfast and County Down Railway Company the Downpatrick, Dundrum, and Newcastle Railway ; and for other purposes.
- ccxiv. An Act for incorporating the Belfast, Strandtown, and High Holywood Railway Company ; and for other purposes.
- ccxv. An Act for incorporating the Ballyclare, Ligoniel, and Belfast Junction Railway Company ; and for other purposes.
- ccxvi. An Act to authorise the construction of a railway in the county of Cork, to be called the Clonakilty Extension Railway ; and for other purposes.
- ccxvii. An Act to authorise the Belfast and Northern Counties Railway Company to construct branch lines of railway from King's Bog to Ballyclare, and from Ballyclare to Doagh ; to extend the time limited by the Belfast and Northern Counties Railway Act, 1878, for the purchase of lands and completion of the railway by that Act authorised ; to subscribe towards the construction of a tramway at Carrickfergus ; to erect or subscribe towards the erection of Hotels at Portrush and Giant's Causeway ; to lend money to the Ballymena, Cushendall, and Redbay Railway Company instead of taking shares in the capital of that Company ; and for other purposes.
- P. ccxviii. An Act to explain and amend the Erne Lough and River Acts, 1876 and 1879.
- P. ccxix. An Act to make provision with respect to the Navigation of the Solent between the Isle of Wight and the Mainland, in the county of Hants.
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PRIVATE ACTS,

PRINTED BY THE QUEEN'S PRINTER,

AND WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

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1. An Act to authorise a certain charge on the Estates of Redcastle and Tarradale, in the county of Ross.
 2. An Act to enable the Trustees of the Earl of Hardwicke's Settled Estates to raise money for payment of his Debts, and for vesting in such Trustees his Life Interest in the Settled Estates; and also for vesting in them certain Pictures and other effects in the Mansion of Wimpole as Heirlooms; and for other purposes in relation thereto.
 3. An Act to authorise the Trustees of the deceased Alexander Gordon, of Ellon, in the county of Aberdeen, to sell certain lands to pay debts; and for other purposes.
 4. An Act for giving effect to a compromise of a suit concerning the last Will and Testament of the late Christopher Neville Bagot deceased, and for modifying certain of the trusts of his said Will affecting his Estates in the counties of Galway and Roscommon in Ireland.
 5. An Act for giving further effect to a compromise of certain opposing claims affecting the Croker Estates in the county of Limerick in Ireland.
 6. An Act for the better regulation of the Hospital of Saint John the Baptist, in the town of Bedford, and to provide for the separation of the rectory of the Parish of Saint John the Baptist, in the town of Bedford, from the Mastership of the said Hospital.
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INDEX

TO THE

PUBLIC GENERAL ACTS,

44 & 45 VICTORIA.—A.D. 1881.

NOTE.—The capital letters placed after the chapter have the following signification :—

E.	<i>that the Act relates to</i>	England (and Wales, if it so extend).
S.	" "	Scotland exclusively.
I.	" "	Ireland exclusively.
W.	" "	Wales exclusively.
E. & I.	" "	England and Ireland.
E. & S.	" "	England and Scotland.
U.K.	" "	Great Britain and Ireland (and Colonies, if it so extend).
C.	" "	The Colonies, or any of them.

** Several Public Acts of a Local Character which have been placed among the Local Acts are included in this Index. These Acts are distinguished by their Chapters being given in Roman Numerals.

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Administration of Justice. <i>See</i> Bankruptcy, &c. British Honduras. Central Criminal Court. Conveyancing and Law of Property. Coroners. Fugitive Offenders. Judicial Committee. Married Women's Property. Newspaper Libel, &c. Peace Preservation. Petty Sessions Clerks. Presumption of Life Limitation. Protection of Person and Property. Reformatory Institutions. Solicitors Remuneration. Statute Law Revision and Civil Procedure. Summary Jurisdiction. Supreme Court of Judicature.	
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	Alsager Marriages Validity; to legalize certain Marriages celebrated in the Chapel at Alsager, in the parish of Barthomley - - - clxvi. E.
	Apprehension of Offenders. <i>See</i> Fugitive Offenders.
	Appropriation of Supplies; to apply the sum of 13,764,507 <i>l.</i> out of the Consolidated Fund to the Service of the year ending the 31st day of March 1882; and to appropriate the Supplies granted in this Session of Parliament - 56. U.K.
	Arms, Possession, &c. of; to amend the Law relating to the carrying and possession of Arms, and for the preservation of the public peace in Ireland - - - 5. I.
	Army Discipline, &c.; to provide during twelve months for the Discipline and Regulation of the Army - - 9. U.K.

	Chap.		Chap.
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— to consolidate the Army Discipline and Regulation Act, 1879 (42 & 43 Vict. c. 33.), and Acts amending the same	58. U.K.	Burial Grounds; to amend the Burial Grounds (Scotland) Act, 1855 (18 & 19 Vict. c. 68.)	27. S.
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Bankruptcy, &c.; to amend the Bankruptcy Acts and Cessio Acts with respect to the discharge of Bankrupt Debtors in Scotland, and in certain other respects	22. S.	Central Criminal Court; to remove certain doubts as to the application of section twenty-four of the Prison Act, 1877 (40 & 41 Vict. c. 21.), and enactments amending the same, to the Central Criminal Court District	64. E.
— to amend the Law relating to the Official Staff of the Court of Bankruptcy in Ireland	23. I.	Certificates (Pedlars); to amend the Pedlars Act, 1871 (34 & 35 Vict. c. 96.), as regards the district within which a certificate authorises a person to act as Pedlar	45. U.K.
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Board of Works. <i>See</i> Metropolitan Board of Works.		Civil Procedure; for promoting the revision of the Statute Law by repealing various enactments chiefly relating to Civil Procedure or matters connected therewith, and for amending in some respects the law relating to Civil Procedure	59. E.
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Bridges (South Wales); to enable County Authorities in South Wales to take over and contribute towards certain Bridges, and to remove doubts as to the liability to repair the highways over and adjoining certain bridges which have been rebuilt	14. W.	Commissioners of Works. <i>See</i> India Office. Inland Revenue Buildings. Superannuation.	
British Honduras; to authorise the establishment of a Court of Appeal for Her Majesty's Colony of British Honduras	36. C.	Commons Inclosure and Regulation. <i>See</i> Inclosure, &c. Orders Confirmation.	
Burial and Registration Acts; to remove doubts as to the operation and effect of so much of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41.), as relates to		Commons (Metropolitan). <i>See</i> Metropolitan Commons Acts.	
		Consolidated Fund: to apply the sum of 2,500,000 <i>l.</i> out of the Consolidated Fund to the Service of the year ending the 31st day of March 1881	1. U.K.

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Consolidated Fund: to apply the sum of 13,355,617 <i>l.</i> 4 <i>s.</i> 2 <i>d.</i> out of the Consolidated Fund to the Service of the years ending the 31st day of March 1880, 1881, and 1882 -	8. U.K.	Court of Bankruptcy in Ireland. <i>See</i> Bankruptcy, &c.	
— to apply the sum of 6,975,627 <i>l.</i> out of the Consolidated Fund to the Service of the year ending the 31st day of March 1882 -	15. U.K.	Customs and Inland Revenue; to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue [Customs: Tea; Beer; Spirits, &c. Excise: Brewers Licences; Spirits; Foreign Wines. Taxes: Income Tax; Inhabited House Duty. Stamps: Probate, Legacy, and Succession Duty, &c.] -	12. U.K.
— to apply the sum of 21,695,712 <i>l.</i> out of the Consolidated Fund to the Service of the year ending the 31st day of March 1882 -	50. U.K.	Customs (Officers, &c.); to provide for the employment of certain Officers and Clerks by the Commissioners of Customs -	30. U.K.
— to apply the sum of 13,764,507 <i>l.</i> out of the Consolidated Fund to the Service of the year ending the 31st day of March 1882; and to appropriate the Supplies granted in this Session of Parliament -	56. U.K.	Drainage Orders Confirmation; to confirm certain Provisional Orders under the Land Drainage Act, 1861 (24 & 25 Vict. c. 133.), relating to Swavesey and Fen Drayton (Cambridge), and Feltwell and Methwold (Norfolk) -	ci. E.
— <i>See also</i> National Debt.		East Indian Railway; for making further provision with respect to the redemption of the Annuity created under the East Indian Railway Company Purchase Act, 1879 (42 & 43 Vict. c. ccvi.); and for other purposes -	53. U.K.
Conveyancing and Law of Property; for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes -	41. E. & I.	Education. <i>See</i> Education Department Orders Confirmation. Leases for Schools. Royal University of Ireland.	
— for making better provision respecting the Remuneration of Solicitors in Conveyancing and other non-contentious Business -	44. E. & I.	Education Department Orders Confirmation; to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75.), to enable the School Board for the United School District of Clay Lane, Derby, to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same -	lxiv. E.
Coroners; to amend the Law relating to Coroners in Ireland -	35. I.	— to confirm a similar Order to enable the School Board for London to put in force	
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Court of Appeal for Honduras. <i>See</i> British Honduras.			

the Lands Clauses Consolidation Act, 1845, and the Acts amending the same -	Chap.		hunt Gas; and to amend the Gas and Water Works Facilities Act, 1870, in so far as relates to the District of the Brentford Gas Company -	Chap.	
Elections (Municipal); to amend the Municipal Elections Amendment (Scotland) Act, 1868 (31 & 32 Vict. c. 108.) -	clxvii. E.		Gas Orders Confirmation; See also Local Government Board's Orders Confirmation (a.)	ciii. E.	
Elections (Parliamentary). See Corrupt Practices, &c. Universities Elections.	13. S.		General Pier and Harbour Act, 1861. See Pier and Harbour Orders Confirmation.		
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Erne Lough and River; to explain and amend the Erne Lough and River Acts, 1876 and 1879 (30 & 40 Vict. c. cxxxvii. and 42 & 43 Vict. c. ccxxii.) -	ccxviii. I.		Gunpowder, Use of, in Mines. See Stratified Ironstone Mines.		
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Fisheries; to further amend the law relating to Sea Fisheries by providing for the protection of Clam and other Bait Beds -	11. E. & S.		— See also Local Government Board's Orders Confirmation (b).		
— to amend the law regulating the Close Season for fishing for Pollen in Ireland -	66. I.		Honduras; to authorise the establishment of a Court of Appeal for Her Majesty's Colony of British Honduras -	36. C.	
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Fugitive Offenders; to amend the law with respect to Fugitive Offenders in Her Majesty's Dominions, and for other purposes connected with the Trial of Offenders -	69. U.K.		Inclosure, &c. Orders Confirmation; to confirm (in pursuance of a Report of the Inclosure Commissioners for England and Wales) the Provisional Order for the regulation of certain lands known as Langbar Moor, situate in the township of Nesfield-with-Langbar, in the parish of Ilkley (York) -	xix. E.	
Gas Orders Confirmation; to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70.), relating to Brentford Gas, Chichester Gas, Ely Gas, Gray's Thurrock Gas, Ilford Gas, Kirkham Gas, Northfleet and Greenhithe Gas, Pinner Gas, Staines and Egham Gas, Stone Gas, and Waltham Abbey and Ches-			— to confirm a similar Order for the regulation of certain Lands known as Beamsley Moor, situate in the township of Beamsleys Both, in the parish of Skipton (York) -	xx. E.	
			— to confirm similar Orders for the inclosure of certain Lands known as Scotton and Ferry Common, situate in		

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the parish of Scotton (Lincoln) . . .	xxi. E.	Interments; to amend the Burial Grounds (Scotland) Act, 1855 (18 & 19 Vict. c. 68.) . . .	27. S.
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Incumbents of Benefices; to extend for a period not exceeding three years the term fixed for the Repayment of Loans granted by the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy to Incumbents of Benefices . . .	clxi. E.	Irish Church Act Amendment; to make provision for the future administration of the Property and the performance of the Duties vested in the Commissioners of Church Temporalities in Ireland . . .	71. I.
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— to authorise the Secretary of State for India in Council to sell a piece of land in Charles Street, Westminster, to the Commissioners of Her Majesty's Works and Public Buildings for the Public Service . . .	63. U.K.	Ironstone Mines. <i>See</i> Stratified Ironstone Mines.	
Indian Loan; to make further provision with respect to the Indian Loan of 1879 . . .	7. E.	Judicature Acts Amendment; to amend the Supreme Court of Judicature Acts; and for other purposes . . .	68. E.
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Land Drainage Orders Confirmation; to confirm certain Provisional Orders under the Land Drainage Act, 1861 (24 & 25 Vict. c. 133.), relating to Swavesey and Fen Drayton (Cambridge), and Feltwell and Methwold (Norfolk) - - -	ci. E.	— to confirm a Provisional Order of the Local Government Board under the provisions of the Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70.), and the Public Health Act, 1875 (38 & 39 Vict. c. 55.), relating to the Borough of Bridgnorth	lxvii. E.
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Land Tax Commissioners Names; to appoint additional Commissioners for executing the Acts for granting a Land Tax and other Rates and Taxes - - -	16. E.	— to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77.), relating to the East Riding of the County of York - - -	xvi. E.
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Law of Property Amendment. See Conveyancing and Law of Property.		— to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61.), as amended and extended by the Poor Law Act, 1879 (42 & 43 Vict. 12.), relating to the parishes of Asgarby, Bolingbroke, Boston, Carrington, Chesilborne, Frieston, Hag-naby, Hareby, Hundleby, Keal West, Leverton, Lusby, Mavis Enderby, Milton Abbas, Miningsby, Ower-moigne, Reithby, Revesby, Spilsby, Stickford, and Thorpe, and to the Townships of Asselby, Balkholme, Barmby-on-the-Marsh, Bella-size, Blacktoft, Cotness, East-rington, Gilberdike, Kendal, Kilpin, Knedlington, Laxton, Metham, Nether Graveship, Saltmarsh, Skelton, and Yokefleet - - -	xvii. E.
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Supreme Court of Judicature; to amend the Supreme Court of Judicature Acts; and for other purposes - - -	68. E.		
Surgeons (Veterinary); to amend the Law relating to Veterinary Surgeons - - -	62. U.K.		
Taxation, Local; to provide for an annual Return of Rates, Taxes, Tolls, and Dues levied for Local Purposes in Scotland - - -	6. S.		
Taxes. <i>See</i> Customs and Inland Revenue.			
Tea Duties. <i>See</i> Customs and Inland Revenue.			
Tenure of Land in Ireland. <i>See</i> Land Law (Ireland).			
Tithe Composition, &c. <i>See</i> Public Loans (Ireland) Remission.			
Tramways; to amend the Tramways (Ireland) Acts, 1860, 1861, and 1871 (23 & 24 Vict. c. 152., 24 & 25 Vict. c. 102., and 34 & 35 Vict. c. 114.) - - -	17. I.		

mentary Voters, and also in regard to the taking of the Poll by means of Voting Papers, in the Universities of Scotland - - -	Chap.				
University of Ireland; for providing Funds to defray certain of the Expenses of the Royal University of Ireland		40.	S.		
Veterinary Surgeons; to amend the Law relating to Veterinary Surgeons - - -					
Voting at Elections. <i>See</i> Corrupt Practices. Universities Elections.		62.	U.K.		
Wales, Acts relating exclusively to. <i>See</i> South Wales Bridges. Sunday Closing.					
Water Orders Confirmation; to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act,					
					Chap.
				1870 (33 & 34 Vict. c. 70.), relating to Dyserth, Meliden, and Prestatyn Water, Harwich Water, Henley-on-Thames Water, Newport and Pillgwenlly Water, Newhaven and Seaford Water, and Poole Water - - -	
				Water Orders Confirmation; <i>See also</i> Local Government Board's Orders Confirmation (a).	clxv. E.
				Wild Birds Protection; to explain the Wild Birds Protection Act, 1880 (43 & 44 Vict. c. 35.) - - -	
				Wills. <i>See</i> Conveyancing and Law of Property. Customs and Inland Revenue.	51. U.K.
				Wines. <i>See</i> Customs and Inland Revenue.	
				Women (Married); for the amendment of the Law regarding Property of Married Women in Scotland - - -	21. S.

TABLES

SHOWING

THE EFFECT OF THE YEAR'S LEGISLATION.

TABLE A.—Acts of 44 & 45 Vict. (in order of Chapter), showing their effect on former Acts.
 TABLE B.—Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 44 & 45 Vict.

(A.)

Acts of 44 & 45 Vict. (in order of Chapter), showing their effect on former Acts.

Ch.		Ch.	
1.	<i>Consolidated Fund</i> (2,500,000 <i>l.</i>) [U.K.]	9.	<i>Army Discipline and Regulation (Annual)</i> [U.K.] Continues 42 & 43 Vict. c. 33., <i>Army Discipline and Regulation Act</i> , 1879. Amends said Act as to <i>Summary Punishment</i> ; and repeals certain portions thereof relating to <i>Corporal Punishment, &c.</i>
2.	<i>Burial and Registration Acts (Doubts Removal)</i> [E.] Amends 43 & 44 Vict. c. 41., <i>Burial Laws Amendment Act</i> , 1880.	10.	<i>Inland Revenue Buildings</i> [U.K.] Applies 15 & 16 Vict. c. 28., <i>Works and Public Buildings Act</i> , 1852. Incorporates 8 & 9 Vict. cc. 18., 19., <i>Lands Clauses Acts</i> , 1845.
3.	<i>Judicial Committee of Privy Council</i> [U.K.] Provides that <i>Lords Justices of Appeal</i> shall be <i>Members of Judicial Committee</i> .	11.	<i>Sea Fisheries (Clam and Bait Beds)</i> [E. & S.] Amends 31 & 32 Vict. c. 45., <i>Sea Fisheries Act</i> , 1868. Applies 41 & 42 Vict. c. 73., <i>Territorial Waters Jurisdiction Act</i> , 1878.
4.	<i>Protection of Person and Property (Ireland)</i> [I.] Continues <i>Enactments</i> as to <i>Out-door Relief</i> contained in 43 Vict. c. 4. and 43 & 44 Vict. c. 14., <i>Relief of Distress (Ireland) Acts</i> , 1880.	12.	<i>Customs and Inland Revenue</i> [U.K.] <i>Customs</i> :— Continues <i>Duties on Tea</i> . <i>Alters Duties on Beer</i> : Amends and applies 39 & 40 Vict. cc. 35., 36., <i>Customs Acts</i> , 1876. Applies 43 & 44 Vict. c. 20., <i>Inland Revenue Act</i> , 1880. <i>Alters Duties on Spirits</i> : Amends 39 & 40 Vict. c. 35., <i>Customs Tariff Act</i> , 1876. <i>Provisions</i> as to <i>landing and shipping of Goods</i> . Incorporates certain sections of this Act with 39 & 40 Vict. c. 36., <i>Customs Consolidation Act</i> , 1876.
5.	<i>Peace Preservation (Ireland)</i> [I.] Amends the law relating to <i>carrying and possession of Arms</i> .		<i>Excise</i> :— Amends 43 & 44 Vict. c. 20., <i>Inland Revenue Act</i> , 1880, as to <i>Brewers' Licences</i> .
6.	<i>Local Taxation Returns (Scotland)</i> [S.] Provides for <i>preparation, &c. of Annual Returns</i> .		
7.	<i>India Office (Sale of Superfluous Land)</i> [E.] Provides for <i>Sale of Land</i> in <i>Charles Street, Westminster</i> , to <i>Commissioners of Works</i> . Exempts <i>Buildings erected on such Land</i> from <i>operation of 18 & 19 Vict. c. 122., Metropolitan Buildings Act</i> , 1855. Applies 21 & 22 Vict. c. 106., <i>India Act</i> , 1858. Applies 28 & 29 Vict. c. 32., <i>India Office Site and Approaches Act</i> , 1865.		
8.	<i>Consolidated Fund</i> (13,355,617 <i>l.</i> 4 <i>s.</i> 2 <i>d.</i>) [U.K.]		

Table A.—Acts of 44 & 45 Vict. (in order of Chapter), &c.—continued.

- Ch.
12. *Customs and Inland Revenue*—cont.
Amends 23 & 24 Vict. c. 129. and 28 & 29 Vict. c. 98., as to Allowances on Spirits exported.
Provisions as to Warehousing Foreign Wine in an Excise Warehouse: Applies 43 & 44 Vict. c. 24., Spirits Act, 1880.
Taxes:—
Grants Duties of Income Tax, and applies existing Acts; applies, also, 32 & 33 Vict. c. 67., Valuation (Metropolis) Act, 1869.
Amends Section 13 of 41 & 42 Vict. c. 15., Customs and Inland Revenue Act, 1878, as to Exemption from Inhabited House Duty.
Amends Section 53 of 43 & 44 Vict. c. 19., Taxes Management Act, 1880, as to its application to Scotland.
Stamps:—
Provisions as to Probate and Legacy Duties, and Duties on Accounts: Alters Duties imposed by 43 Vict. c. 14., Customs and Inland Revenue Act, 1880.
Provisions as to obtaining Probate, &c. when gross value of Estate does not exceed 300l.: Extends 38 & 39 Vict. c. 41. and 39 & 40 Vict. c. 24., as amended by 39 & 40 Vict. c. 70, Sheriff Court (Scotland) Act, 1876.
Cesser of Legacy and Succession Duty of 1l. per cent. in certain cases: Amends 55 Geo. 3. c. 184., and 16 & 17 Vict. c. 51.
Amends 33 & 34 Vict. c. 97., as to certain Instruments and Policies.
Stamp Duty on Stock Certificates to Bearer under 38 & 39 Vict. c. 83., Local Authorities Loans Act, 1875.
Stamp Duties of 1d. may be denoted by Postage Stamps, and vice versa.
Repeals Enactments in Schedule; viz.: 3 & 4 Vict. c. 96. s. 20., Postage Duties.
23 & 24 Vict. c. 129., ss. 2., 3., Spirits: Channel Islands.
30 & 31 Vict. c. 23. ss. 5., 6., &c., Customs and Inland Revenue.
32 & 33 Vict. c. 103., ss. 3-5., 9-11., Warehousing of Wines and Spirits.
39 & 40 Vict. c. 35., Schedule in part, Customs Duties.
39 & 40 Vict. c. 36., ss. 48., 110., 143., 184., 187., Customs Consolidation.
- Ch.
13. *Municipal Elections Act Amendment (Scotland)* [S.]
Amends 31 & 32 Vict. c. 108., as to right of voting of Females.
14. *South Wales Bridges* [W.]
Applies 41 & 42 Vict. 77., Highways and Locomotives (Amendment) Act, 1878.
Applies 23 & 24 Vict. c. 68., Highways (South Wales) Act, 1860.
Applies 43 & 44 Vict. c. 5., County Bridges Loans Extension Act, 1880.
Amends 43 Geo. 3. c. 59., County Bridges Act, 1803.
Extends powers of borrowing under 4 & 5 Vict. c. 49., County Bridges Act, 1841.
15. *Consolidated Fund* (6,975,627l.) [U.K.]
16. *Land Tax Commissioners Names* [E.]
Recites 7 & 8 Geo. 4. c. 75., and subsequent Acts appointing additional Commissioners; and provides that persons named in Schedule deposited with Clerk of House of Commons shall be additional Commissioners for England and Wales.
17. *Tramways (Ireland) Acts Amendment* [I.]
Amends 23 & 24 Vict. c. 152. } Tramways
Amends 24 & 25 Vict. c. 102. } (Ireland)
Amends 34 & 35 Vict. c. 114. } Acts, 1860,
1861, and
1871.
18. *Petty Sessions Clerks (Ireland)* [I.]
Amends law with respect to payment of Petty Sessions Clerks in Ireland.
19. *Newspapers* [U.K.]
Repeals part of Section 6 of 33 & 34 Vict. c. 79., Post Office Act, 1870.
For purposes of Act, Channel Islands and Isle of Man deemed part of United Kingdom.
20. *Post Office (Land)* [U.K.]
Applies 7 Will. 4 & 1 Vict. c. 33., Post Office (Management) Act, 1837.
Applies 7 Will. 4 & 1 Vict. c. 36., Post Office (Offences) Act, 1837.
Applies 12 & 13 Vict. c. 66., Colonial Inland Post Office Act, 1849.
Applies 26 & 27 Vict. c. 43., Post Office Lands Act, 1863.
Applies 18 & 19 Vict. c. 58., Duchy of Lancaster Lands Act, 1855.
Applies 8 & 9 Vict. } Lands Clauses
cc. 18. 19., } Acts, 1845 and
Applies 23 & 24 Vict. } 1860.
c. 106., }

Table A.—Acts of 44 & 45 Vict. (in order of Chapter), &c.—*continued*.

- Ch.
20. *Post Office (Land)*—cont.
Applies 14 & 15 Vict.
c. 70.,
Applies 23 & 24 Vict. } Railways (Ireland) Acts, 1851,
c. 97., } 1860, 1864, and
Applies 27 & 28 Vict. } Railway (Tra-
c. 71., } verse) Act, 1868.
Applies 31 & 32 Vict.
c. 70.,
Repeals section 22 (with an exception)
of 32 & 33 Vict. c. 73., Telegraph Act,
1869.
21. *Married Women's Property (Scotland)* [S.]
Amends 40 & 41 Vict. c. 29., Married
Women's Property (Scotland) Act,
1877.
22. *Bankruptcy and Cessio (Scotland)* [S.]
Amends 19 & 20 Vict. c. 79., Bank-
ruptcy (Scotland) Act, 1856.
Amends 6 & 7 Will. 4. c. 56., Cessio
bonorum (Scotland) Act, 1836.
Amends 39 & 40 Vict. c. 70., Sheriff
Court (Scotland) Act, 1876.
Amends 43 & 44 Vict., c. 34., Debtors
(Scotland) Act, 1880.
23. *Court of Bankruptcy (Ireland) Officers and
Clerks* [I.]
Amends 20 & 21 Vict. c. 60., Irish Bank-
rupt and Insolvent Act, 1857.
24. *Summary Jurisdiction (Process)* [E. & S.]
Amends 42 & 43 Vict. c. 49., Summary
Jurisdiction Act, 1879.
Amends 27 & 28 Vict. c. 53., Summary
Procedure Act, 1864.
25. *Incumbents of Benefices Loans Extension*
[E.]
Extends period for repayment of Loans
under the following Acts:—17 Geo. 3.
c. 53., 21 Geo. 3. c. 66., 7 Geo. 4. c. 66.,
1 & 2 Vict. c. 23., 1 & 2 Vict. c. 106.,
28 & 29 Vict. c. 69., 34 & 35 Vict.
c. 43., 35 & 36 Vict. c. 96.
26. *Stratified Ironstone Mines (Gunpowder)*
[U.K.]
Exempts Ironstone Mines from regula-
tions as to Cartridges under section 51
of 35 & 36 Vict. c. 76., Coal Mines
Regulation Act, 1872.
27. *Burial Grounds (Scotland) Act, 1855, Amend-
ment* [S.]
Amends 18 & 19 Vict. c. 68., Burial
Grounds (Scotland) Act, 1855.
28. *Local Government Board (Ireland) Act
Amendment* [I.]
Amends 35 & 36 Vict. c. 69., Local Go-
vernment Board (Ireland) Act, 1872.
- Ch.
28. *Local Government Board (Ireland) Act
Amendment*—cont.
Amends 43 Vict. c. 1., Seed Supply
(Ireland) Act, 1880.
Amends 43 & 44 Vict. c. 14., Relief of
Distress (Ireland) Amendment Act,
1880.
29. *Reformatory Institutions (Ireland)* [I.]
Incorporates certain clauses of 10 & 11
Vict. c. 16., Commissioners Clauses
Act, 1847.
Applies 31 & 32 Vict. c. 59., Reforma-
tory Schools (Ireland) Act, 1868.
Applies Public Works Loans (Ireland)
Act, 1877, and Public Works Loans
Act, 1879.
30. *Customs (Officers)* [U.K.]
Amends (virtually) 22 Vict. c. 26., Super-
annuation Act, 1859.
31. *Annual Turnpike Acts Continuance* [E.]
Repeals and continues certain Local
Acts as set forth in Schedule.
32. *Public Loans (Ireland) Remission* [I.]
Extinguishes Debts due to Consolidated
Fund under the following Acts:—
4 Geo. 4. c. 99., Tithe Composition.
3 & 4 Will. 4. c. 100., } Tithe Relief.
1 & 2 Vict. c. 109., }
2 & 3 Vict. c. 97., }
33. *Summary Jurisdiction (Scotland)* [S.]
Amends 27 & 28 Vict. c. 53., Summary
Procedure Act, 1864; and this Act
construed therewith.
Extends to Scotland certain provisions
of 42 & 43 Vict. c. 49., Summary
Jurisdiction Act, 1879.
Applies section 6 of 38 & 39 Vict. c. 62.,
Summary Prosecutions Appeals (Scot-
land) Act, 1875.
Applies sections 23 and 24 of 31 & 32
Vict. c. 123., Salmon Fisheries (Scot-
land) Act, 1868.
Applies 7 Will. 4. & 1 Vict. c. 41., Small
Debts (Scotland) Act, 1837.
Applies Tweed Fisheries Acts.
„ Act to Proceedings under Post
Office Acts and Revenue Acts.
34. *Metropolitan Open Spaces* [E.]
Amends 40 & 41 Vict. c. 35., Metro-
politan Open Spaces Act, 1877.
Applies 18 & 19 Vict. c. 120., Metropolis
Management Act, 1855.
Applies 41 & 42 Vict. c. cxxvii., Corpo-
ration of London (Open Spaces) Act,
1878.

Table A. —Acts of 44 & 45 Vict. (in order of Chapter), &c.—*continued*.

Ch.		Ch.	
34.	<i>Metropolitan Open Spaces</i> —cont. Applies 26 & 27 Vict. c. 13., Gardens, &c. Protection Act, 1863. Applies 8 & 9 Vict. c. 18., Lands Clauses Act, 1845.	38.	<i>Public Works Loans</i> —cont. loan for houses for Labouring Classes in Ireland. Removes doubts as to construction of 43 & 44 Vict. c. ccvi., Mulkear Drain- age District Act, 1880. Confirms loans in 43 Vict. c. 4., Relief of Distress (Ireland) Act, 1880. Grants 1,400,000 <i>l.</i> to Irish Land Com- mission.
35.	<i>Coroners (Ireland)</i> [I.] Repeals (in part) 9 & 10 Vict. c. 37., Coroners (Ireland) Act, 1846. Applies 21 & 22 Vict. c. 90., Medical Act, 1858.	39.	<i>Removal Terms (Burghs) (Scotland)</i> [S.] Applies 25 & 26 Vict. c. 101., General Police and Improvement (Scotland) Act, 1862.
36.	<i>British Honduras (Court of Appeal)</i> [C.] Constitutes Supreme Court of Jamaica a Court of Appeal from Supreme Court of British Honduras.	40.	<i>Universities Elections Amendment (Scot- land)</i> [S.] Amends 31 & 32 Vict. c. 48., Repre- sentation of the People (Scotland) Act, 1868. Repeals all Acts, &c. inconsistent with this Act.
37.	<i>Alkali, &c. Works Regulation</i> [U.K.] Repeals 26 & 27 Vict. c. 124., Repeals 31 & 32 Vict. c. 36., Repeals 37 & 38 Vict. c. 43., Applies 39 and 40 Vict. c. 75., Rivers Pollution Act, 1876. Applies 10 & 11 Vict. c. lxxi., London (City) Small Debts Act, 1847. Applies 14 & 15 Vict. c. 57., Civil Bills Courts, Ireland. Applies 18 & 19 Vict. c. 120., Metropolis Management Act, 1855. Applies 38 & 39 Vict. c. 55., Public Health Act, 1875. Applies 30 & 31 Vict. c. 101., Public Health (Scotland) Act, 1867. Applies 41 & 42 Vict. c. 52., Public Health (Ireland) Act, 1878. Applies 34 & 35 Vict. c. 70., Local Government Board Act, 1871.	41.	<i>Conveyancing and Law of Property</i> [E. & I.] Repeals 8 & 9 Vict. c. 119., Conveyance of Real Property Act, 1845. Repeals s. 48. of 15 & 16 Vict. c. 86., Equity Jurisdiction Act, 1852. Repeals s. 4. to 9 of 22 & 23 Vict. c. 35., Law of Property and Relief of Trustees Act, 1859. Repeals s. 2. of 23 & 24 Vict. c. 126., Common Law Procedure Act, 1860. Repeals part of 23 & 24 Vict. c. 145., Trustees, &c. Act, 1860. Repeals part of 37 & 38 Vict. c. 78., Vendor and Purchaser Act, 1874. Repeals s. 48. of 38 & 39 Vict. c. 87., Land Transfer Act, 1875. Applies 40 & 41 Vict. c. 18., Settled Estates Act, 1877. Applies 39 & 40 Vict. c. 59., Appellate Jurisdiction Act, 1876. Applies 40 & 41 Vict. c. 57., Supreme Court of Judicature (Ireland) Act, 1877. Affects the following Acts (<i>see</i> <i>Schedule</i>):— 1 & 2 Vict. c. 110., Imprisonment for Debt Act, 1838. 2 & 3 Vict. c. 11., { Protection of 18 & 19 Vict. c. 15., { Purchasers { Acts, 1839 { and 1855. 22 & 23 Vict. c. 35., { Law of Pro- 23 & 24 Vict. c. 38., { perty, &c. { Acts, 1859 { and 1860.
38.	<i>Public Works Loans</i> [U.K.] Amends 38 & 39 Vict. c. 89., Public Works Loans Act, 1875. Applies 38 & 39 Vict. } Public Works c. 89., } Loans Act, Applies 42 & 43 Vict. } 1875 and c. 77., } 1879. Applies 40 & 41 Vict. c. 27., Public Works Loans (Ireland) Act, 1877. Remits interest on loan to Tralee Har- bour Commission (43 & 44 Vict. c. lxxxv.) Remits sum expended on Monivea Drainage Works (29 & 30 Vict. c. 49.) Provides as to loan to Wicklow Harbour Commissioners. Amends 32 & 33 Vict. c. 77. and 35 & 36 Vict. c. 55., Basses Lights Acts, 1869 and 1872. Explains 29 & 30 Vict. cc. 28, 34., as to		

Table A.—Acts of 44 & 45 Vict. (in order of Chapter), &c.—*continued*.

- Ch.
41. *Conveyancing and Law of Property*—cont.
23 & 24 Vict. c. 115., Crown Debts and Judgments Act, 1860.
27 & 28 Vict. c. 112., Judgment Law Amendment Act, 1864.
28 & 29 Vict. c. 104., Crown Suits, &c. Act, 1865.
31 & 32 Vict. c. 54., Judgments Extension Act, 1868.
5 & 6 Will. 4. c. 62., Statutory Declarations Act, 1835.
42. *Corrupt Practices (Suspension of Elections)* [E.]
Suspends Elections in the following Cities and Boroughs; viz., Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford, and Sandwich.
43. *Superannuation* [U.K.]
Extends 36 & 37 Vict. c. 23., Superannuation Act Amendment Act, 1873.
44. *Solicitors Remuneration* [E. & I.]
Applies 23 & 24 Vict. c. 127., Attorneys and Solicitors Act, 1860.
Applies 29 & 30 Vict. c. 84., Attorneys and Solicitors (Ireland) Act, 1866.
Restricts application of 33 & 34 Vict. c. 28., Attorneys and Solicitors Act, 1870.
45. *Pedlars* [U.K.]
Amends 34 & 35 Vict. c. 96., Pedlars Act, 1871.
46. *Patriotic Fund* [U.K.]
Amends 30 & 31 Vict. c. 98., Patriotic Fund Act, 1867.
47. *Presumption of Life Limitation (Scotland)* [S.]
Limits Presumption of Life of persons long absent from Scotland.
Applies 40 & 41 Vict. c. 50., Sheriff Courts (Scotland) Act, 1877.
48. *Metropolitan Board of Works (Money)* [E.]
Amends 38 & 39 Vict. { Metropolitan
c. 65., Board of Works
Amends 43 & 44 Vict. { (Money) Acts,
c. 25., 1875 and 1880.
Amends 32 & 33 Vict. c. 102., Metro-
politan Board of Works (Loans) Act,
1869.
Applies Metropolitan Board of Works (Loans) Acts, 1869 to 1871.
Applies Metropolitan Board of Works (Money) Acts, 1875 to 1880.
Empowers Board to expend Moneys for purposes described in the Schedules.
Applies 24 & 25 Vict. c. 98., as to forgery of Metropolitan Bills.
- Ch.
49. *Land Law (Ireland)* [I.]
Constitutes a land commission under title of "The Irish Land Commission."
Amends, and in part repeals 33 & 34 Vict. c. 46., 35 & 36 Vict. c. 32., Landlord and Tenant (Ireland) Acts, 1870 and 1872.
Applies 43 & 44 Vict. c. 47., Ground Game Act, 1880.
Applies 27 & 28 Vict. c. 67., Game (Ireland) Act, 1864.
Applies 10 & 11 Vict. c. 32., &c., Landed Property Improvement (Ireland) Acts.
Applies 8 & 9 Vict. } Lands Clauses
c. 18., Consolidation
Applies 23 & 24 } Acts, 1845 and
Vict. c. 106. } 1860.
Applies 42 & 43 Vict. c. 77., Public Works Loans Act, 1879.
Applies 40 & 41 Vict. c. 27., Public Works Loans (Ireland) Act, 1877.
Applies 40 & 41 Vict. c. 56., County Offices and Courts (Ireland) Act, 1877.
Applies 42 & 43 Vict. c. 58., Public Offices Fees Act, 1879.
50. *Consolidated Fund* (21,695,712l.) [U.K.]
51. *Wild Birds Protection* [U.K.]
Amends 43 & 44 Vict. c. 35., Wild Birds Protection Act, 1880.
52. *Royal University of Ireland* [I.]
Provides for payment of certain sums by the Commissioners of Church Temporalities in Ireland (accruing to them under 32 & 33 Vict. c. 42.), for the purposes of the Royal University of Ireland.
Applies 29 & 30 Vict. c. 39., Exchequer and Audit Act, 1866.
53. *East Indian Railway (Redemption of Annuities)* [U.K.]
Amends 42 & 43 Vict. c. ccvii., East Indian Railway Company Purchase Act, 1879.
Amends 42 & 43 Vict. c. 43., East Indian Railway (Redemption) Act, 1879.
54. *Indian Loan* [U.K.]
Repeals 42 & 43 Vict. c. 45., Indian Advance Act, 1879.
Repeals 42 & 43 Vict. c. 61., East Indian Loan (Annuities) Act, 1879.

Table A.—Acts of 44 & 45 Vict. (in order of Chapter), &c.—continued.

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| <p>Ch.
54. <i>Indian Loan</i>—cont.
Applies 43 & 44 Vict. c. 36., Savings Bank Act, 1880.
Applies 38 & 39 Vict. c. 45., Sinking Fund Act, 1875.</p> <p>55. <i>National Debt</i> [U.K.]
Converts certain Exchequer Bonds into permanent Annuities.
Applies 33 & 39 Vict. c. 45., Sinking Fund Act, 1875.
Removes Doubts as to certain investments under 43 & 44 Vict. c. 36., Savings Banks Act, 1880.</p> <p>56. <i>Appropriation</i> [U.K.]</p> <p>57. <i>Regulation of the Forces</i> [U.K.]
Amends 42 & 43 Vict. c. 33., Army Discipline and Regulation Act, 1879.
Amends 26 & 27 Vict. c. 57., Regimental Debts Act, 1863.
Applies 38 & 39 Vict. c. 69., Militia Voluntary Enlistment Act, 1875.
Applies 26 & 27 Vict. c. 65., Volunteer Act, 1863.
Applies 30 & 31 Vict. c. 110., Reserve Force Act, 1867.
Applies 30 & 31 Vict. c. 111., Militia Reserve Act, 1867.
Removes doubts as to Pensions of Soldiers in Indian Forces under 24 & 25 Vict. c. 74.
Repeals the several Acts and portions of Acts described in the Schedule. [These Enactments will be found in their chronological order in Table B.]</p> <p>58. <i>Army Discipline and Regulation</i> [U.K.]
Consolidates 42 & 43 Vict. c. 33. (Army Discipline and Regulation Act, 1879,) and Acts amending the same.
Repeals (in part) 47 Geo. 3. sess. 2. c. 25., Half Pay, Pensions, &c.
Repeals (in part) 42 & 43 Vict. c. 32., Army Discipline, &c. (Commencement) Act, 1879.
Repeals (in part) 42 & 43 Vict. c. 33., Army Discipline, &c. Act, 1879.
Repeals (in part) 44 & 45 Vict. c. 9., Army Discipline, &c. (Annual) Act, 1881.
Repeals (in part) 44 & 45 Vict. c. 57., Regulation of the Forces Act, 1881.</p> <p>59. <i>Statute Law Revision and Civil Procedure</i> [E.]
Repeals (with Savings) the Enactments described in the Schedule. [These Enactments will be found in Table B.]</p> | <p>Ch.
59. <i>Statute Law Revision and Civil Procedure</i>—cont.
Extends 38 & 39 Vict. c. 77., Supreme Court of Judicature Act, 1875, as to Rules of Court.</p> <p>60. <i>Newspaper Libel and Registration</i> [E. & I.]
Applies 42 & 43 Vict. c. 49., Summary Jurisdiction Act, 1879.
Applies 22 & 23 Vict. c. 17., Vexatious Indictments Act, 1859.
Applies 14 & 15 Vict. c. 93., Petty Sessions (Ireland) Act, 1851.</p> <p>61. <i>Sunday Closing (Wales)</i> [W.]
Applies 35 & 36 Vict. c. 94.,
Applies 37 & 38 Vict. c. 49., } Licensing Acts, 1872 and 1874.</p> <p>62. <i>Veterinary Surgeons</i> [U.K.]
Applies 11 & 12 Vict. c. 43. and 42 & 43 Vict. c. 49., Summary Jurisdiction Acts, 1848 and 1879.
Applies 27 & 28 Vict. c. 53., Summary Procedure Act, 1864.
Applies 14 & 15 Vict. c. 93., Petty Sessions (Ireland) Act, 1851.</p> <p>63. <i>India Office Auditor</i> [U.K.]
Amends 21 & 22 Vict. c. 106., Government of India Act, 1858.
Applies 22 Vict. c. 26., Superannuation Act, 1859.
Applies 23 & 24 Vict. c. 89., Superannuation Act Amendment, 1860.</p> <p>64. <i>Central Criminal Court (Prisons)</i> [E.]
Amends 40 & 41 Vict. c. 21., Prison Act, 1877.
Amends 42 & 43 Vict. c. 1., Spring Assizes Act, 1879.
Amends 4 & 5 Will. 4. c. 36., Central Criminal Court Act, 1836.
Amends 19 & 20 Vict. c. 16., Central Criminal Court Act, 1856.
Amends 25 & 26 Vict. c. 65., Jurisdiction in Homicides Act, 1862.
Applies 4 & 5 Will. 4. c. 36., Central Criminal Court Act, 1834.
Applies 28 & 29 Vict. c. 126., Prison Act, 1865.
Applies 31 & 32 Vict. c. 24., Capital Punishment Amendment Act, 1868.</p> <p>65. <i>Leases for Schools (Ireland)</i> [I.]
Provides greater facilities for obtaining Leases of Land for erection of Schools in Ireland.</p> |
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Table A.—Acts of 44 & 45 Vict. (in order of Chapter), &c.—*continued*.

- Ch.
66. *Pollen Fishing (Ireland)* [I.]
Extends Open Season for fishing for Pollen.
Applies 32 & 33 Vict. c. 92., Fisheries (Ireland) Act, 1869.
67. *Petroleum (Hawkers)* [U.K.]
Amends 34 & 35 Vict. c. 105., Petroleum Act, 1871.
Construes Act with 34 & 35 Vict. c. 105. and 42 & 43 Vict. c. 47.
68. *Supreme Court of Judicature* [E.]
Amends 36 & 37 }
Vict. c. 66. } Supreme Court
Amends 38 & 39 } of Judicature
Vict. c. 77., } Acts, 1873, 1875,
Amends 40 & 41 } and 1877.
Vict. c. 9., }
Amends 42 & 43 Vict. c. 78., Supreme
Court of Judicature (Offices) Act,
1879.
Amends 20 & 21 Vict. c. 85., Divorce
Act, 1857.
Amends 31 & 32 Vict. c. 125., Parlia-
mentary Elections Act, 1868.
Amends 39 & 40 Vict. c. 59., Appellate
Jurisdiction Act, 1876.
Amends 32 & 33 Vict. c. 91., Courts of
Justice (Salaries and Funds) Act,
1869.
Amends 6 & 7 Vict. }
c. 73., }
Amends 23 & 24 } Solicitors Acts,
Vict. c. 127., } 1843, 1860, 1877.
Amends 40 & 41 }
Vict. c. 62., }
Amends 3 & 4 Will. 4. c. 74., Acknow-
ledgments by Married Women.
Amends 19 & 20 Vict. c. 108., County
Courts Act, 1856.
Defines Jurisdiction of High Court in
Registration and Election cases, 28 &
29 Vict. c. 36., 31 & 32 Vict. c. 125.,
35 & 36 Vict. c. 60., 41 & 42 Vict.
c. 26.
Amends 24 Geo. 2. c. 48., Abbreviation
of Michaelmas Term.
- Ch.
69. *Fugitive Offenders*—cont.
Applies 17 & 18 Vict. c. 104., Merchant
Shipping Act, 1854.
Applies 41 & 42 Vict. c. 67., Foreign
Jurisdiction Act, 1878.
70. *Expiring Laws Continuance* [U.K.]
Continues (as in Schedule) the following
Acts, and Acts amending the same;
viz.:—
5 & 6 Will. 4. c. 27., Linen, &c. Manufactures
(Ireland).
3 & 4 Vict. c. 89., Poor Rates (Stock in Trade
Exemption).
4 & 5 Vict. c. 35., Copyhold, &c. Commissions.
4 & 5 Vict. c. 69., Application of Highway
Rates to Turnpike Roads.
10 & 11 Vict. c. 32., Landed Property Improve-
ment (Ireland).
10 & 11 Vict. c. 98., Ecclesiastical Jurisdiction.
11 & 12 Vict. c. 32., County Cess (Ireland).
14 & 15 Vict. c. 104., Episcopal, &c. Estates.
17 & 18 Vict. c. 102., Corrupt Practices Preven-
tion.
23 & 24 Vict. c. 19., Dwellings for Labouring
Classes (Ireland).
24 & 25 Vict. c. 109., Salmon Fishery (Eng-
land).
25 & 26 Vict. c. 97., Salmon Fisheries (Scot-
land).
26 & 27 Vict. c. 105., Promissory Notes.
27 & 28 Vict. c. 20., Promissory Notes, &c.
(Ireland).
28 & 29 Vict. c. 46., Militia Ballots Suspension.
28 & 29 Vict. c. 83., Locomotives on Roads.
29 & 30 Vict. c. 52., Prosecution Expenses.
31 & 32 Vict. c. 125., Election Petitions and
Corrupt Practices.
32 & 33 Vict. c. 21., Election Commissioners
Expenses.
32 & 33 Vict. c. 42., Irish Church.
34 & 35 Vict. c. 87., Sunday Observance Pro-
secutions.
35 & 36 Vict. c. 33., Parliamentary and Muni-
cipal Elections (Ballot).
38 & 39 Vict. c. 48., Police Expenses.
38 & 39 Vict. c. 84., Returning Officers Ex-
penses.
39 & 40 Vict. c. 21., Juries (Ireland).
41 & 42 Vict. c. 41., Returning Officers Ex-
penses (Scotland).
43 Vict. c. 18., Parliamentary Elections.
71. *Irish Church Act Amendment* [I.]
Amends 32 & 33 Vict. c. 42., Irish Church
Act, 1869.
Dissolves Church Temporalities (Ireland)
Commission, and transfers Property
and Powers to the Irish Land Com-
mission.
Applies 4 & 5 Will. 4. c. 24., s. 20., as to
Superannuation, &c.
72. *Highways and Locomotives Act Amendment*
[E.]
Amends 41 & 42 Vict. c. 77., Highways
and Locomotives (Amendment) Act,
1878.

(B.)

Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 44 & 45 Vict.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 44 & 45 Vict.
24 Geo. 2. c. 48. - -	Abbreviation of Michaelmas Term.	Amended -	68
42 Geo. 3. c. 68. s. 7. - -	Yeomanry (Ireland) - -	Repealed -	57
43 Geo. 3. c. 59. - -	County Bridges - -	Amended -	14
„ c. 61. - -	Relief of soldiers, sailors, and marines, &c.	Repealed -	57
44 Geo. 3. c. 54. ss. 21, 25. -	Yeomanry and volunteers (Great Britain).	Repealed -	57
47 Geo. 3. sess. 2. c. 25. in part.	Army - - - -	Repealed -	57 and 58
50 Geo. 3. c. 87.* - -	} East India Company's Forces	Repealed -	57
51 Geo. 3. c. 75.* - -			
„ c. 103.* - -	} Half-pay and other allowances	Repealed -	57
52 Geo. 3. c. 151. - -			
55 Geo. 3. c. 184. - -	Legacy and Succession Duty -	Amended -	12
58 Geo. 3. c. 73.* - -	Regimental debts, &c. - -	Repealed -	57
2 & 3 Will. 4. c. 106. - -	Half-pay, &c. - -	Repealed -	57
3 & 4 Will. 4. c. 74. - -	Acknowledgments by married women.	Amended -	68
4 & 5 Will. 4. c. 36. - -	Central Criminal Court - -	Amended -	64
6 & 7 Will. 4. c. 56. - -	Cessio bonorum (Scotland) -	Amended -	22
7 Will. 4. & 1 Vict. c. 29.*	Foreign Enlistment - -	Repealed -	57
3 & 4 Vict. c. 96. s. 20. - -	Postage Duties - -	Repealed -	12
4 & 5 Vict. c. 49. - -	County Bridges - -	Amended -	14
6 & 7 Vict. c. 34. - -	Apprehension of offenders -	Repealed -	69
„ c. 73. - -	Solicitors Act, 1843 - -	Amended -	68
7 & 8 Vict. c. 18. - -	Courts-martial in the East Indies.	Repealed -	57
8 & 9 Vict. c. 119. - -	Conveyance of Real Property -	Repealed -	41
9 & 10 Vict. c. 37. in part	Coroners (Ireland) - -	Repealed -	35
10 & 11 Vict. c. 37. - -	Limiting service in the army -	Repealed -	57
„ c. 63. in part - -	Limiting service in the Royal Marine forces.	Repealed -	57
15 & 16 Vict. c. 86. s. 48 - -	Equity Jurisdiction - -	Repealed -	41
16 & 17 Vict. c. 51. - -	Legacy and Succession Duty -	Amended -	12
18 & 19 Vict. c. 68. - -	Burial Grounds (Scotland) -	Amended -	27
19 & 20 Vict. c. 16. - -	Central Criminal Court - -	Amended -	64
„ c. 79. - -	Bankruptcy (Scotland) - -	Amended -	22
„ c. 108. - -	County Courts Act, 1856 - -	Amended -	68
20 Vict. c. 1. s. 1. in part	Limiting service in the Royal Marine forces.	Repealed -	57
20 & 21 Vict. c. 60. - -	Court of Bankruptcy (Ireland) -	Amended -	23
„ c. 85. - -	Divorce Act, 1857 - -	Amended -	68
21 & 22 Vict. c. 106. - -	Government of India Act, 1858	Amended -	63
22 Vict. c. 26. - -	Superannuation—Customs - -	Amended -	30
22 & 23 Vict. c. 35. ss. 4-9. -	Law of Property, &c. - -	Repealed -	41
23 & 24 Vict. c. 126. s. 2. - -	Common Law Procedure Act, 1860.	Repealed -	41
c. 127. - -	Solicitors Act, 1860 - -	Amended -	68

* So much as is unrepealed.

INDEX TO THE PUBLIC GENERAL ACTS,

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 44 & 45 Vict.
23 & 24 Vict. c. 129. -	Excise—Spirits exported	Amended -	12
„ c. 129. ss. 2, 3. -	Spirits, Channel Islands -	Repealed -	12
„ c. 145. in part -	Trustees, &c. Act, 1860	Repealed -	41
„ c. 152. -	} Tramways (Ireland) -	Amended -	17
24 & 25 Vict. c. 102. -			
25 & 26 Vict. c. 65. -	Jurisdiction in Homicides	Amended -	64
26 & 27 Vict. c. 57. -	Regimental Debts Act, 1863	Amended -	57
„ c. 65. in part -	Volunteer Act, 1863	Repealed -	57
„ c. 124. -	Alkali Works -	Repealed -	37
27 & 28 Vict. c. 53. -	Summary Procedure	Amended -	24 and 33
28 & 29 Vict. c. 98. -	Excise—Spirits exported	Amended -	
30 & 31 Vict. c. 23. in part -	Customs and Inland Revenue	Repealed -	12
„ c. 34. -	Army Enlistment	Repealed -	57
„ c. 98. -	Patriotic Fund -	Amended -	46
„ c. 110. in part -	Reserve Force Act, 1867	Repealed -	57
„ c. 111. in part -	Militia Reserve Act, 1867	Repealed -	57
31 & 32 Vict. c. 36. -	Alkali Works -	Repealed -	37
„ c. 45. -	Sea Fisheries -	Amended -	11
„ c. 48. -	Universities Elections (Scotland)	Amended -	40
„ c. 108. -	Municipal Elections (Scotland)	Amended -	13
„ c. 125. -	Parliamentary Elections Act, 1868.	Amended -	68
32 & 33 Vict. c. 42. -	Irish Church Act, 1869 -	Amended -	71
„ c. 73. s. 22. in part.	Post Office Telegraphs -	Repealed -	20
„ c. 77. -	Basses Lights Act, 1869	Amended -	38
„ c. 91. -	Supreme Court of Judicature	Amended -	68
„ c. 102. -	Metropolitan Board of Works (Loans).	Amended -	48
„ c. 103. in part -	Warehousing of Wines and Spirits.	Repealed -	12
33 & 34 Vict. c. 46. in part -	Landlord and Tenant (Ireland)	Repealed -	49
„ c. 67. in part -	Army Enlistment Act, 1870	Repealed -	57
„ c. 79. s. 6. in part.	Post Office—Newspapers	Repealed -	19
„ c. 97. -	Stamp Duties -	Amended -	12
34 & 35 Vict. c. 86. ss. 9, 15.	Regulation of the Forces Act, 1871.	Repealed -	57
„ c. 96. -	Pedlars Certificates -	Amended -	45
„ c. 105. -	Petroleum (Hawkers) -	Amended -	67
„ c. 114. -	Tramways (Ireland) -	Amended -	17
35 & 36 Vict. c. 42. in part -	Landlord and Tenant (Ireland)	Repealed -	49
„ c. 55. -	Basses Lights Act, 1872	Amended -	38
„ c. 69. -	Local Government Board (Ire- land).	Amended -	28
„ c. 76. -	Coal Mines -	Amended -	26
36 & 37 Vict. c. 66. -	Supreme Court of Judicature	Amended -	68
37 & 38 Vict. c. 43. -	Alkali Works -	Repealed -	37
„ c. 78. in part -	Vendor and Purchaser Act, 1874	Repealed -	41
38 & 39 Vict. c. 41. -	Duties on Inventories (Scotland)	Amended -	12
„ c. 65. -	Metropolitan Board of Works (Money).	Amended -	48
„ c. 69. in part -	Militia Voluntary Enlistment Act, 1875.	Repealed -	57
„ c. 77. -	Supreme Court of Judicature	Amended -	68

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 44 & 45 Vict.
38 & 39 Vict. c. 87. s. 48. -	Land Transfer Act, 1875 -	Repealed -	41
c. 89. -	Public Works Loans -	Amended -	38
39 & 40 Vict. c. 24. -	Duties on Inventories (Scotland)	Amended -	12
cc. 35, 36. -	Customs -	Amended -	12 and 57
c. 59. -	Appellate Jurisdiction -	Amended -	68
c. 70. -	Sheriff Court (Scotland) -	Amended -	22
40 & 41 Vict. c. 9. -	Supreme Court of Judicature -	Amended -	68
c. 21. -	Prison Act, 1877 -	Amended -	64
c. 29. -	Married Women's Property (Scotland).	Amended -	21
c. 35. -	Metropolitan Open Spaces -	Amended -	34
c. 62. -	Solicitors Act, 1877 -	Amended -	68
41 & 42 Vict. c. 10. in part	Mutiny Act, 1878 -	Repealed -	57
c. 11. -	Marine Mutiny Act, 1878 -	Repealed -	57
c. 15. s. 13. -	Inhabited House Duty -	Amended -	12
c. 77. -	Highways and Locomotives -	Amended -	72
42 & 43 Vict. c. 1. -	Spring Assizes Act, 1879 -	Amended -	64
c. 32. in part	Army Discipline, &c. -	Repealed -	57 and 58
c. 33. -	Army Discipline, &c. -	Amended -	9, 57, and 58
c. 43. -	East Indian Railway -	Amended -	53
c. 45. -	Indian Loan -	Amended -	54
c. 49. -	Summary Jurisdiction -	Amended -	24
c. 61. -	Indian Loan -	Amended -	54
c. 78. -	Supreme Court of Judicature -	Amended -	68
c. ccvi. -	East Indian Railway -	Amended -	53
43 Vict. c. 1. -	Seeds Supply (Ireland) -	Amended -	28
c. 14. -	Probate and Legacy Duties -	Amended -	12
43 & 44 Vict. c. 14. -	Relief of Distress (Ireland) -	Amended -	28
c. 19. s. 53. -	Taxes Management -	Amended -	12
c. 20. -	Inland Revenue—Brewers Li- cences.	Amended -	12
c. 25. -	Metropolitan Board of Works (Money).	Amended -	48
c. 34. -	Debtors (Scotland) -	Amended -	22
c. 35. -	Wild Birds Protection -	Amended -	51
c. 41. -	Burials -	Amended -	2
44 & 45 Vict. c. 9. in part	} Army -	Repealed -	58
c. 57. in part			

Table B.—Acts of former Sessions repealed and amended—*continued*.*Repeals effected by the Statute Law Revision and Civil Procedure Act,
44 & 45 Vict. c. 59.*

Act repealed by 44 & 45 Vict. c. 59.*	Subject-matter of Act repealed.
20 Hen. 3. c. 1. -	The Provisions of Merton. Chapter one.
52 Hen. 3. c. 3. -	The Statute of Marlborough. Chapter three.
" c. 5. -	" " Chapter five.
" c. 9. -	" " Chapter nine.
" c. 10. -	" " Chapter ten.
" c. 21. -	" " Chapter twenty-one.
" c. 23. in pt. -	" " Chapter twenty-three.
3 Edw. 1. c. 19. -	The Statutes of Westminster; the First.
13 Edw. 1. c. 2. -	" " the Second. Chapter two.
" c. 30. -	" " the Second. Chapter thirty.
" c. 31. -	" " the Second. Chapter thirty-one.
21 Edw. 1. -	Statute of the Justices of Assize.
27 Edw. 1. -	The Statute of Fines levied.
28 Edw. 1. c. 16. -	Articles upon the Charters. Chapter sixteen.
9 Edw. 2. stat. 2. in pt. -	The Statute of Sheriffs.
12 Edw. 2. -	The Statute of York.
Statutes of uncertain date	The Statutes of the Exchequer, from " And the treasurer and barons " to " the King's own debt."
1 Edw. 3. stat. 1. -	Statute the First.
2 Edw. 3. c. 2. -	Statute made at Northampton. Chapter two.
4 Edw. 3. in pt. -	Statute made at Westminster.
14 Edw. 3. stat. 1. c. 16. -	Statute the First. Chapter sixteen.
18 Edw. 3. stat. 3. c. 5. -	Statute the Third. Chapter five.
20 Edw. 3. -	Ordinance for the Justices.
8 Ric. 2. -	Statute made at Westminster in the Eighth year.
11 Ric. 2. -	Statute made at Westminster in the Eleventh Year.
12 Ric. 2. c. 10. in pt. -	Statute made at Cambridge in the Twelfth Year. Chapter ten.
13 Ric. 2. stat. 1. in pt. -	Statute of the Thirteenth Year.
7 Hen. 4. c. 3. -	Statute of the Seventh Year. Chapter three.
34 & 35 Hen. 8. c. 26. in pt. -	For certain Ordinances in the King's Dominions and Principality of Wales.
23 Eliz. c. 3. -	For Reformation of Errors in Fines and Recoveries.
17 Chas. 2. c. 7. -	For more speedy and effectual proceeding upon Distresses and Avowries for Rents.
29 Chas. 2. c. 3. in pt. -	For Prevention of Frauds and Perjuries.
12 & 13 Will. 3. c. 2. s. 3. in pt. -	For the further Limitation of the Crown, &c.
9 Anne c. 25. s. 7. -	Proceedings on Writs of Mandamus, &c.
5 Geo. 2. c. 27. -	Frivolous and Vexatious Arrests.
11 Geo. 2. c. 19. s. 23. -	Securing the Payment of Rents, &c.
12 Geo. 2. c. 27. -	Justices of Assize.
43 Geo. 3. c. 161. s. 10. in pt. -	House Tax.
52 Geo. 3. c. 101. s. 1. in pt. -	Charitable Trusts.
1 Will. 4. c. 7. ss. 4, 8, 9. -	Judgments in Common Law Courts, &c.
" c. 21. s. 6. -	Proceedings in Prohibition and Mandamus.
2 & 3 Will. 4. c. 33. in pt. -	Service of Process from Courts of Chancery and Exchequer.
3 & 4 Will. 4. c. 42. in pt. -	Further Amendment of the Law and better Advancement of Justice.
5 Vict. c. 5. in pt. -	Administration of Justice.

* See Note prefixed to Schedule to the Act.

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed by 44 & 45 Vict. c. 59.	Subject-matter of Act repealed.
5 & 6 Vict. c. 54. s. 18. -	Actions of Replevin for Rentcharge.
6 & 7 Vict. c. 67. in pt. -	Writs of Error upon Proceedings on Mandamus.
12 & 13 Vict. c. 96. s. 5. in pt.	Admiralty Offences Colonial Act, 1849.
13 & 14 Vict. c. 35. in pt.	Proceedings in Chancery in England.
15 & 16 Vict. c. 80. in pt.	Abolition of office of Master in Chancery, &c.
„ c. 86. in pt.	Practice and proceeding in Chancery.
„ c. 87. s. 5. -	Relief of Suitors in Chancery.
17 & 18 Vict. c. 78. s. 5. -	Administration of Oaths, &c. in the Court of Admiralty.
„ c. 82. ss. 2-5.	Administration of Justice in the Court of Chancery of County Palatine of Lancaster.
18 & 19 Vict. c. 45. -	Assimilating practice in County Palatine of Lancaster to that of other counties, &c.
„ c. 90. s. 3. in pt.	Costs in Court of Exchequer.
19 & 20 Vict. c. 86. -	Office of Cursitor Baron of Exchequer.
„ c. 113. s. 6. in pt.	Taking of Evidence in Her Majesty's Dominions in relation to matters pending before Foreign Tribunals.
20 & 21 Vict. c. 77. in pt.	Probates and Letters of Administration in England.
21 & 22 Vict. c. 27. in pt.	} Procedure in the High Court of Chancery, &c.
„ c. 95. in pt.	
22 & 23 Vict. c. 6. -	Enabling Serjeants, Barristers-at-law, Attorneys, and Solicitors to practise in the High Court of Admiralty.
„ c. 21. in pt.	Regulating office of Queen's Remembrancer, &c.
„ c. 59. s. 26. in pt.	Railway Companies Arbitration Act, 1859.
23 & 24 Vict. c. 34. s. 15.	The Petitions of Right Act, 1860.
„ c. 54. -	Amending Act for abolishing offices on the Crown side of the Court of Queen's Bench, &c.
„ c. 127. s. 25.	Amending the laws relating to Attorneys, Solicitors, &c.
24 & 25 Vict. c. 10. in pt.	The Admiralty Court Act, 1861.
25 & 26 Vict. c. 42. in pt.	The Chancery Regulation Act, 1862.
„ c. 67. in pt.	The Declaration of Title Act, 1862.
„ c. 89. in pt.	The Companies Act, 1862.
26 & 27 Vict. c. 122. s. 3.	Circuits of the Judges, &c.
28 & 29 Vict. c. 104. in pt.	The Crown Suits, &c. Act, 1865.
30 & 31 Vict. c. 64. -	Dispatch of Business in the Court of Appeal in Chancery.
„ c. 68. -	Dispatch of Business in the Chambers of the Judges of Superior Courts of Common Law.
„ c. 87. ss. 4, 5.	The Court of Chancery (Officers) Act, 1867.
„ c. 131. s. 20. in pt.	The Companies Act, 1867.
31 & 32 Vict. c. 11. -	Dispatch of Business in the Court of Appeal in Chancery.
„ c. 40. s. 11.	The Partition Act, 1868.
„ c. 54. s. 7. in pt.	The Judgments Extension Act, 1868.
33 & 34 Vict. c. 6. -	Extending jurisdiction of the Judges of the Superior Courts of Common Law.
39 & 40 Vict. c. 66. -	The Legal Practitioners Act, 1876.
43 & 44 Vict. c. 19. in pt.	The Taxes Management Act, 1880.

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EDITED BY
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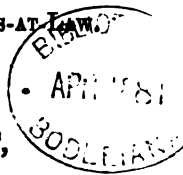
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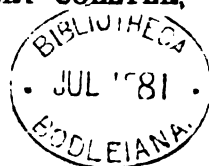
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